



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.01.2022

Pronounced on : 06.04.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

C.M.A.No.1674 of 2018

A.Venkatesan .. Appellant / Petitioner

Versus

1.M.Srinivasan

2.Branch Manager,
United India Insurance Company Limited,
Branch Office,
No.11-A, M.C. Road,
Ambur Post, Vellore District.

.. Respondents / Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.07.2007 made in M.C.O.P.No.380 of 2003 on the file of the Motor Accidents Claims Tribunal-cum Subordinate Judge, Tirupattur.

For Appellant : Mr.Pa.Sudesh Kumar

For R2 : Mr.P.Sankara Narayanan
for Mr.C.Paranthaman

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order of dismissal dated 11.07.2007 made in M.C.O.P.No.380 of 2003 on the file of the Motor Accidents Claims Tribunal-cum Sub-Court, Tirupattur.

2. The appellant is the claimant in M.C.O.P.No.380 of 2003 on the file of the Motor Accidents Claims Tribunal-cum Sub-Court, Tirupattur. He filed the above said claim petition claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.02.2003.



3. According to appellant, on 15.02.2003, he was proceeding in the TVS 50-XL Moped bearing Registration No.TN-23-W2238 belonging to the 1st respondent and insured with the 2nd respondent, as a pillion rider driven by one V.Venkatesan, Son of Venu in Tirupattur to Singarapettai Road, towards Singarapettai. At about 19.00 hours, when the vehicle was proceeding near Sunnambukaalai, in Tirupattur to Singarapettai Road, the said V.Venkatesan, the rider of the TVS 50 Moped, driven the vehicle in a rash and reckless manner and hit against a pedestrian. In the impact, the appellant/pillion rider fell down and sustained severe injuries. The accident had occurred only due to rash and reckless riding of the rider of the TVS 50-XL Moped. Therefore, the appellant filed the above said claim petition claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him against the respondents being the owner and insurer of the TVS 50-XL Moped bearing Registration No.TN-23-W2238 respectively.

4. The 1st respondent-owner of the TVS 50-XL Moped bearing Registration No.TN-23-W2238 remained exparte before the Tribunal.

5. The 2nd respondent/Insurance Company filed counter statement and denied all the averments made by the appellant/claimant. According to the 2nd respondent/Insurance Company, without the knowledge of the 1st respondent/owner, the said TVS 50-XL Moped bearing Registration No.TN-23-W2238 was taken away by one V.Venkatesan and caused the accident. The accident was caused purely due to the pedestrian who crossed the road without noticing the on coming vehicle. The appellant/claimant herein has to prove that he traveled in the said two wheeler on that particular date and time. Without those particulars the 2nd respondent/Insurance Company is not liable to pay any compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.B.G.Ilango was examined as P.W.2 and 12 documents were marked as Exs.P1 to P12. The 2nd respondent-Insurance Company examined one Panjaseelan as R.W.1 but no documentary evidence was marked.

7. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition on the ground that the appellant being a gratuitous passenger is not entitled for any compensation payable by the Insurance Company. It was also concluded that the policy of insurance did not cover a gratuitous passenger and therefore, the insurance company cannot be mulcted with any liability to pay compensation for the appellant. Against the said order of dismissal dated 11.07.2007



made in M.C.O.P.No.380 of 2003, the appellant has come out with the present appeal.

8. The learned counsel for the appellant would vehemently contend that the claimant has established that he was riding pillion in the motor vehicle driven by the Venkatesan, son of Venu. There is also no dispute that the appellant sustained serious injuries and was hospitalized. The Tribunal having found that the appellant traveled in the two-wheeler as a pillion rider has erroneously branded the appellant as a gratuitous passenger. When the appellant traveled in a two-wheeler the question of treating him as a gratuitous passenger will not arise. It is not the case of the 2nd respondent/Insurance Company that the two-wheeler driven by Vengadesan carried excess passengers than permissible. Therefore, it is vehemently contended that the question of gratuitous passenger will not arise in this case. He also submitted that the appellant-claimant was working as a police constable in Police Department and he has proved his income. Therefore, the Tribunal erred in dismissing the claim petition and it calls for interference by this Court.

9. On the above contention, this Court heard the learned counsel for the 2nd respondent/Insurance Company who justified the award passed by the Tribunal and prayed for dismissal of the appeal.

10. Heard the learned counsel on both sides and perused the materials available on record.

11. At the outset, this Court is of the considered view that the Tribunal, without proper appreciation of the legal position, has erroneously dismissed the claim petition. It is not in dispute that the appellant traveled as a pillion rider in the two-wheeler driven by Venkatesan, son of Venu. As a pillion rider no negligence can be attributed as against the appellant in causing the accident. This would stand testimony to the fact that the First Information Report in Crime No.152/2003 on the file of Thirupathur Taluk Police Station, was registered only against the Venkatesan, son of Venu who had driven the two-wheeler. Therefore, for the negligence on the part of the driver of the two-wheeler, the appellant cannot be deprived of payment of compensation. Even otherwise the Insurance Policy stands in the name of the 1st respondent herein, which clearly specifies in the Schedule-B thereof that it covers "liability to public-basic". The word 'public' denoted in the Schedule-B includes a third party to the insurance policy and it is not referable to a particular person such as driver, occupant etc., In the present case, the appellant being a pillion rider will fall within the purview of third party and in that event the Insurance Company



is liable to pay the compensation to the appellant. In order to lend support to this conclusion, reliance is being placed on an identical case dealt with by the Division Bench of this Court in TATA AIG General Insurance Company Ltd., Vs. Kaveri and two Others, reported in 2021 1 TN MAC 307 (DB), wherein it was held by the Division Bench of this Court that the deceased in that case, was only an occupant of the car driven by his friend and therefore it was held that the deceased was a third party to the insurance policy. The ratio laid down by the Division Bench squarely applies to the facts of this case.

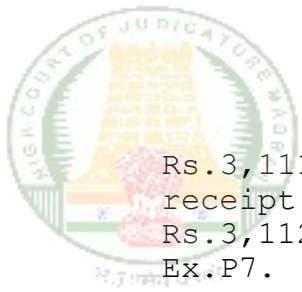
12. As it was held that the Insurance Company is liable to pay the compensation, this Court proceeds to determine the compensation which the appellant is entitled to.

13. The appellant was working as a Head Constable at the time of accident. He was 55 years old and in all likelihood he would retire from service in another 5 years of the accident. In order to prove his income, the appellant has not marked any document and even in the cross examination, when a specific question was posed to the appellant as to whether he has filed any document to prove his income, he has only stated that he had taken medical leave for one month and he has not produced any income proof. Having regard to the above, this Court is of the opinion that the appellant, though claimed to have been earning a sum of Rs.8,720/- per month, in the absence of any proof thereof, this Court has fixed a sum of Rs.5,000/- per month as his notional income.

14. The claimant has examined P.W.2/Doctor who has stated that the claimant suffered 30% disability. Even according to the appellant he has stated that he had taken one month medical leave due to the injuries. As per the claim petition, he was admitted on 15.02.2003 in CMC Medical Hospital, Vellore. It is not clear as to how long the claimant was in treatment as an in-patient. Therefore, a sum of Rs.3,000/- per percentage of disability is hereby awarded, which would meet the ends of justice. Accordingly, a total sum of Rs.90,000/- is awarded towards disability of the claimant.

15. For pain and sufferings a sum of Rs.20,000/- is awarded taking note of the age and the nature of injuries sustained by the appellant morefully set out in Column 11 of the claim petition.

16. For medical expenses, it is stated that the claimant had incurred more than Rs.25,000/-. The fact remain that the claimant had taken treatment in CMC Hospital, Vellore. It is stated that he has also taken treatment in a private hospital subsequently. On perusal of Ex.P7 the appellant has incurred



Rs.3,111.79/- towards medical expenses. Ex.P9 is a reimbursement receipt for Rs.140/-. Having regard to the above, a sum of Rs.3,112/- is hereby awarded towards medical expenses based on Ex.P7.

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17. Taking note of the age of the appellant and the disability suffered by him a sum of Rs.5,000/- each is awarded towards extra nourishment and attendant charges.

18. Accordingly, the award passed by the Tribunal is set aside and the compensation awarded to the appellant is tabulated under the following heads:

Disability	Rs.90,000/-
Medical Expenses	Rs. 3,112/-
Pain and sufferings	Rs.20,000/-
Extra nourishment	Rs. 5,000/-
Attendant charges	Rs. 5,000/-

Total	= Rs.1,23,112/-

In all, a total sum of Rs.1,30,000/- is awarded as compensation to the appellant.

19. In the result, the award and decree passed by the trial Court in M.C.O.P.No.380 of 2003 on the file of the Motor Accidents Claims Tribunal-cum Sub-Court, Tirupattur, is set aside and this Civil Miscellaneous Appeal is allowed. The 2nd respondent/Insurance Company is directed to deposit the award amount determined by this Court in this appeal to the credit of M.C.O.P.No.380 of 2003 on the file of the Motor Accidents Claims Tribunal-cum Sub-Court, Tirupattur. On such deposit, the claimant is permitted to withdraw the entire compensation amount. No Costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

gbi

To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Tirupattur.



Copy to
The Section Officer,
VR Section,
High Court, Madras.

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+1cc to Mr.P.Sankara Narayanan, Advocate, S.R.No.23785

C.M.A.No.1674 of 2018

AJS[co]
NSK 28/04/2022