



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM:

The HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.925 of 2012

United India Insurance Co. Ltd.,
No.64, Armenian Street,
Chennai-600 001.
...Appellant

Vs.

1.G.Raj Kamal

2.G.Dinesh
...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 12.07.2011 made in M.C.O.P.No.201 of 2009 on the file of the (Small Causes Court V Judge) at Chennai.

For Appellant : M/s.J.Chandran

For Respondents : Mr.A.N.Viswanatha Rao for R1



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the compensation awarded in favour of claimants in M.C.O.P.201 of 2009 as per the award dated 12.07.2011 on the file of Motor Accident Claims Tribunal (Small Causes Court V), Judge, Chennai.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. The case of the claimant is that on 16.11.2008 at about 21.15 hours, he was traveling in a two wheeler as a pillion rider with one G.Dinesh rider at the Kamarajar Salai, Chennai. While the vehicle reached Uzhaipalar Statue, Chennai, the rider rode the two wheeler in a zig zag manner and dashed with another two wheeler, which came in opposite direction, which resulted in causing injuries to the claimant. Therefore, he has filed the claim petition claiming a compensation for a sum of Rs.15,00,000/-.



4. The first respondent who is the rider of the two wheeler in which claimant has travelled has not contested the claim petition and remained exparte. The second respondent who is the insurer of the first respondent's vehicle filed a counter and contended that the allegation levelled in the claim petition is only against the rider of the unknown motor vehicle. Hence, the claim shall be made only against the driver of unknown vehicle and claim against the respondent is not maintainable and prays to dismiss the claim petition.

5. Before the Motor Accident claims Tribunal, on the side of claimants P.W.1 and P.W.2 were examined and Exs.P.1 to P.12 were marked in support of his claim. On the side of the respondents R.W.1 was examined and Exs.R.1 to R.3 were marked in support of their contention.

6. The Tribunal after considering the case of the claimant, in Point No.1 has held that both the driver of the motor vehicle in which the claimant has traveled as well as rider of the unknown motor vehicle were responsible for the accident. In Point No.2, Tribunal has held that the second respondent is liable to pay the compensation to the claimant herein. In Point No.3 the Tribunal has quantified the compensation and



award of compensation, the Insurance Company has filed this Civil Miscellaneous Appeal on the ground that since the claim petition has been filed under Section 166 of the Motor Vehicles Act and Rule 3 of the MACT, the tortfeasor in this case is rider of unknown vehicle, hence the respondents are not liable to pay the compensation. It is also contended that the claimant that no insurance policy has been produced to show that pillion rider is also having coverage to claim compensation. The Tribunal without considering those aspects, awarded the compensation, hence prays to set aside the same.

7. Per contra, learned counsel for the claimant submitted that it is a case of composite negligence and from the pleading and evidence, the Tribunal has categorically held that rider of both the vehicles are responsible for the accident and since claimant has been injured in the composite negligence, he is entitled to claim compensation from any one of the tortfeasor. Learned counsel also relied on the judgment of the Hon'ble Apex Court in ***Pawan Kumar and another vs. Harikishan Dass Mohan Lal & others*** reported in 2014 (1) TN MAC 321 and ***Kheneyi vs New India Ass. Co Ltd & others*** reported in 2015 (1) TN MAC-801 and prays to confirm the award.



8. On perusal of the claim petition which shows that claimant has specifically pleaded that rider of the two wheeler in which claimant has travelled as well as the rider of the unknown two wheeler, have driven the vehicle in a rash and negligent manner and both have colluded with each other and since the other vehicle is unknown he has come forward to file the claim petition against the respondents herein.

9. In the cross examination of the claimant, it is suggested that due to the negligent driving of the rider of the unknown two wheeler accident was occurred and he has reiterated that first respondent has driven the vehicle in a zig-zag manner in the road which also resulted in accident. He also stated that he has not lodged any complaint against the first respondent who is also his friend. There is a categorical denial of the suggestion that accident has not occurred due to the negligent act of the first respondent. This evidence as well as pleadings shows that the claimants have taken a stand that the accident has occurred due the composite negligence on the part of the riders of both the two wheelers.

10. The Insurance Company has also relied on the Accident Register issued to the respondent as well as the claimant who has sustained injuries in the accident which were marked as Ex.R2 and R3



respectively. In the Accident Register, it has been recorded that claimant has sustained injuries in a road traffic accident by falling from the two wheeler. By relying on this recording, learned counsel for the Insurance Company has contended it is a case of accident of fall, and false claim has been made as if, it was accident happened due to the negligent driving. In the Accident Register, it is stated that the claimant herein has fallen from the two wheeler while he was travelling as a pillion rider. Even if the entries in the Accident Register is accepted, the pillion rider who has travelled in the vehicle driven by the first respondent is entitled to claim compensation for the negligent driving of the first respondent herein. Accident Register is not sufficient to disprove the evidence of P.W-1/claimant that the accident has occurred only due to the fall. The respondent have not adduced any contra evidence to contradict the evidence of P.W.1. This Court accepts the case of the claimant that due to the negligent act of the riders of the both the two wheelers, the accident has occurred and it is a case of composite negligence.

11. Even though liability has not been fixed on the side of the offending vehicle, since it is case of composite negligence, as held by the Apex Court in *Pawan Kumar and another vs. Harikishan Dass Mohan*



India Ass. Co Ltd & others reported in 2015 (1) TN MAC-801, the claimant is entitled to claim compensation from any one of the tortfeasor and accordingly the claimant has chosen the first respondent and the insurer for claiming compensation and since other vehicle is also unknown, the claim petition filed against the first respondent is maintainable and he is liable to pay the compensation as directed by the Tribunal. Hence this Court finds there is no infirmity in the finding of the Tribunal that it is a case of composite negligence and both the riders of the two wheeler were responsible for the accident.

12. The next contention of the Insurance Company is that the claimant have not proved that there is insurance coverage for the pillion rider. Before the Tribunal, the Insurance Company filed their counter and admitted that the vehicle was insured with them and they have not denied that the vehicle was not insured with them. Insurance Company has not examined their official witness to say that whether pillion rider was having a coverage or not. Without examining pillion rider they only proceeded to examine the Police official who has registered the First Information Report, and he has deposed that he has registered case in Cr.No.485 of 2008 under Section 387 of I.P.C and Section 184 of the Motor Vehicle



two wheeler bearing Registration No.TN 03 V 2278 and it was colluded with that another vehicle and the claimant and first respondent sustained injuries. In the cross examination it is elicited that final report was not yet filed till date of examination of witness. This evidence of R.W.1 has also corroborate the case of the claimant with regard to the manner in which the accident has taken place. They have not examined any witness to show that there is no coverage to the pillion rider and they have also not cross examined P.W.1 stating that there is no insurance policy for the vehicle in which the claimant has travelled. Hence the contention that the pillion rider was not having policy coverage has not been proved before the Tribunal. Further, they have not examined any official witness to show that there is no insurance policy for the vehicle or insurance coverage to the pillion rider. Having failed so before the Tribunal they are not entitled to contend the factual aspect that there is no insurance coverage for the pillion rider or the fact that the vehicle has not been insured. Hence, this contention is rejected.

13. The claimant have not approached this Court seeking for enhancement of compensation, hence Insurance Company has not challenged the quantum of compensation awarded.



14. With regard to the quantum of compensation, even though the P.W.2 the Doctor who has assessed the disability was examined before the Tribunal and he has assessed the disability as 55% for the injuries sustained by the claimant. The Tribunal assessed the evidence and also the injuries sustained by the claimant, and only accepted 30% as disability. Hence, this Court finds no infirmity in the said finding of the Tribunal and accordingly the same is confirmed. The Tribunal has notionally fixed income of the claimant as Rs.3,000/- per month and adopted multiplier method and awarded Rs.1,15,200/-, for Pain and Suffering Rs.25,000/- was awarded, for Medical Expenses Rs. 2,96,698/- was awarded, for Extra Nourishment Rs.10,000/- is awarded and for Transport to Hospital Rs.5,000/- was awarded and for Attender Charges Rs.10,000/- was awarded. This Court finds no infirmity in the award of the Tribunal under various heads and the same is hereby confirmed.

15. In the result, this Civil Miscellaneous Petition is dismissed.

No costs.

15.09.2023

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Index : Yes/No

Neutral Citation : Yes/No



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K.RAJASEKAR, J.

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To:

- 1.The Small Causes Court V Judge, Chennai.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No. 925 of 2012

15.09.2023