IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1514 of 2019
and
C.M.P.No.4266 of 2019

The Divisional Manager,
Shriram General Insurance Co. Ltd.,
Divisional Office,
E8, EPIP, RIICO Industrial Area,
Sitapura,
Jaipur-302 022.
Rajasthan. .. Appellant

Vs.

1. Gopi
2. M.Jaikrishnan .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 17.03.2017 made in M.C.O.P.No.3349 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Sub-Court), Krishnagiri.

For appellant : Mr.S.Dakshinamoorthy
For respondents : Notice served - No appearance

JUDGMENT

This is a case of injury. The claimant is the injured and he has filed the Claim Petition before the Tribunal in M.C.O.P.No.3349 of 2013. The Tribunal, after enquiry, awarded the compensation. Since the claimant did not possess valid driving licence at the time of accident, the Tribunal ordered pay and recovery from the owner of the vehicle. Challenging the same, the Insurance Company has filed the present appeal before this Court.

2. On 06.03.2013, the claimant was driving Eicher Vehicle bearing Registration No.TN-50-C-4766 belonging to the second respondent herein, insured with the appellant. The claimant was proceeding from Kundharapalli to Dharmapuri, after loading the goods in the vehicle. He was driving the vehicle slowly, cautiously and keeping on the left side of the road. At about 0.30 hours, i.e. at

about 12.30 am on 06.03.2013, while the claimant was driving the said vehicle on the Krishnagiri-Dharmapuri NH Road, near Keragodahalli Anjaneyar Temple, towards Dharmapuri, one unknown lorry was parked without any signal or indication on the road. There were no thorny bushes or stones put by the driver around the lorry and the same was parked without any parking light in a negligent manner and when very closely seen, the claimant came to know that the lorry was parked and to avoid the accident, the claimant applied sudden brake and swerved on the Eicher vehicle on the right side of the road whereby the claimant lost balance and dragged and toppled down on the road side pit, as a result of which, the claimant sustained grievous injuries. Immediately, the claimant was taken to Government Hospital, Dharmapuri and after first-aid, he was shifted to Vinayaka Mission Hospital, Salem. The Karimangalam Police had registered a case against the driver of the Eicher vehicle in Crime No.88 of 2013 under Sections 279 and 337 IPC. The claimant was 30 years old at the time of accident and as Driver, he was earning Rs.9,000/- per month and now he could not do his work as before. Therefore, the claimant has filed the petition claiming compensation of Rs.9 lakhs from the respondents.

3. The appellant/Insurance Company filed counter disputing the facts pleaded by the claimant and sought permission to contest the case under Section 170 of the Motor Vehicles Act. It is specifically alleged by the Insurance Company that the accident had occurred only due to the rash and negligent manner of driving by the claimant and that the claimant himself is a tort-feasor. The claimant was feeling sleepy, due to which, he lost control and hit a small bridge, which resulted in the vehicle capsized, thereby resulting in the accident. The second respondent herein did not have valid driving licence and there is no valid Insurance Policy. Hence, the appellant is not liable to indemnify the first respondent/claimant. The owner of the vehicle committed breach of policy and its terms and conditions and hence, the owner only is liable to pay compensation to the claimant. The Insurance Company also denied the age, occupation, income, injuries and expenses of the claimant and prayed to dismiss

the claim petition.

4. Before the Tribunal, the claimant was examined as P.W.1 and marked Exs.P-1 to P-8. On the side of the respondents before the Tribunal, R.Ws.1 and 2 were examined and Exs.R-1 and R-2 were marked. Ex.C-1 being the Disability Certificate issued by the Medical Board, was also marked as Court document.

5. The Tribunal, after enquiry, partly allowed the petition directing the appellant/Insurance Company to initially pay a sum of Rs.8,30,800/- to the claimant, with interest @ 9% from the date of filing of the claim petition till the date of deposit and thereafter, the appellant was directed to recover the said compensation amount from the second respondent herein (owner of the vehicle). Challenging the same, the Insurance Company has filed the present appeal.

6. Though notice was served on both the respondents, none

appeared for them, inspite of their names being reflected and printed in the cause list.

7. Learned counsel for the appellant/Insurance Company submitted that the claimant claimed compensation against his own wrong, i.e. the claimant himself is a tort-feasor in respect of the vehicle which he was driving. Therefore, the provisions of the Motor Vehicles Act would not apply to the case of the claimant. Further, even the case of the claimant would not come under the provisions of the Employees' Compensation Act, if the case is converted to that Act. The driver under the second respondent being the owner of the vehicle, did not possess valid driving licence and hence, according to the learned counsel for the appellant, they are not liable to pay the compensation as awarded by the Tribunal.

8. In support of his contentions, the learned counsel for the appellant/Insurance Company relied on a decision of the Honourable Supreme Court in the case of Beli Ram Vs. Rajinder

Kumar and others, reported in MANU/SC/0715/2020 and submitted that the Tribunal failed to consider the facts in proper perspective and therefore, the direction to recover the compensation from the owner, should not be supposed to have been done, and hence, the learned counsel prayed to allow the present appeal and that the appellant/Insurance Company may be exonerated from their liability to pay the compensation.

9. This Court heard the submissions of the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

10. Admittedly, the first respondent/claimant drove the insured vehicle and due to rash and negligent driving and also due to parking of the offending vehicle, the claimant sustained injuries. Moreover, as admitted, at the time of accident, the driver of the offending vehicle did not possess valid driving licence. Therefore, as per the facts and circumstances of the case and also taking into

consideration the evidence adduced by both parties, as contended by the learned counsel for the appellant/Insurance Company, the provisions of the Motor Vehicles Act are not applicable to the case of the claimant and further, the accident took place in the year 2013 and the claim petition was pending from 2013 and disposed of only in 2017. The wrong choosing of the forum may not be the sole ground to disallow the claim made by the claimant.

11. Hence, this Court is now converting the claim petition filed under the Motor Vehicles Act into the claim made under the Employee's Compensation Act. Admittedly, the first respondent/claimant was driving the Eicher vehicle, which belonged to the second respondent herein and the offending vehicle (parked lorry) was insured with the appellant/Insurance Company. While the first respondent/claimant was proceeding towards Dharmapuri, after loading the goods in the vehicle, one unknown lorry was parked without any parking signal or indication on the road and the driver of the lorry has not taken precautionary measures to indicate that the

lorry was parked therein without even any parking light and it was parked in a negligent manner and hence, the first respondent/claimant was under the impression that the lorry was in moving state and after coming close to the lorry, the claimant was not able to control his Eicher vehicle and he had hit the parked lorry from behind and it has resulted in the claimant sustaining injuries. Since the claimant himself has caused the accident, he cannot claim compensation under the Motor Vehicles Act and he can claim compensation only against his employer under the Employees' Compensation Act. However, it is an admitted fact that the second respondent's vehicle, insured with the appellant/Insurance Company, is liable to pay the compensation. As pointed out by the learned counsel for the appellant/Insurance Company, even the claimant did not possess valid driving licence at the time of accident. Therefore, long before the accident, the licence had expired and therefore, as per the above decision of the Supreme Court, the Insurance Company herein is not liable to pay the compensation and the employer engaged the driver also, was not having any valid licence. Moreover, under the Employee's Compensation Act, the employer has to pay the compensation and therefore, the Insurance Company need not indemnify the loss caused by the employee at the employer. Therefore, the Tribunal failed to consider the above facts and awarded the compensation mechanically under the Motor Vehicles Act, and hence, the impugned Award passed by the Tribunal is set aside and the claim petition is now converted as the one filed under the Employee's Compensation Act. At the time of accident, even the first respondent herein/claimant did not possess any valid driving licence and the second respondent allowed the driver of the lorry to proceed without any valid driving licence, and hence, the appellant/Insurance Company is not liable to pay compensation. It is for the employer of the driver of the vehicle owned by the second respondent, liable to pay necessary compensation to the first respondent/claimant.

12. The direction of the Tribunal to recover the compensation from the owner being the second respondent herein, is accordingly

set aside for the above reasons and thus, the appellant/Insurance Company is exonerated from their liability to pay the compensation to the first respondent/claimant as ordered by the Tribunal.

13. When once the claim petition is now treated to have been converted into the one filed under the Employee's Compensation Act, the compensation is now being fixed under the Employee's Compensation Act.

14. The first respondent/claimant is the driver of the Eicher vehicle and the second respondent herein is the owner of the offending vehicle being parked on the road side. Therefore, the minimum wages as per Section 4(i)(a) of the Employee's Compensation Act is Rs.8,000/- at the relevant point of time as fixed by the Central Government. Since the claimant had not produced any salary certificate/pay slip, this Court is now fixing the monthly salary of the claimant as Rs.8,000/-. At the time of accident, the claimant was aged about 30 years and therefore, as per the

provisions of the Employee's Compensation Act, and as per Schedule IV therein, the factor to be applied is 207.98. As per Section 4(i)(a) of the Employee's Compensation Act, 50% of the salary has to be taken into consideration while calculating the compensation.

15. Accordingly, the compensation is computed as below:

Rs.4,000/- x 207.98 = Rs.8,31,920/-

Add: Medical expenses Rs.1,65,000/-

Total compensation = Rs.9,96,920/-

(rounded off to Rs.9,97,000/-)

16. Since the appellant/Insurance Company has already deposited the entire amount of compensation before the Tribunal, the same is permitted to be withdrawn by them, as the appellant/Insurance Company is now exonerated of their liability to pay the compensation.

17. The decision of the Supreme Court relied on by the learned

counsel for the appellant is distinguishable on facts and the same could not be applied to the facts of the present case.

18. For all the reasons stated above, the second respondent herein is liable to pay the above computed compensation to the first respondent/claimant. Accordingly, the second respondent herein is directed to deposit the above computed compensation amount within a period of one month from the date of receipt of a copy of this judgment, with interest @ 12% from the date of claim petition till the date of deposit.

19. The appeal is partly allowed with the above modification. There shall be no order as to costs. Consequently, C.M.P. is closed.

11.09.2023

Index: Yes/no
Speaking Order: Yes/no
Neutral Citation case: Yes/no

cs

To

1. The Special Sub-Judge (Motor Accidents Claims Tribunal), Krishnagiri.
2. The Section Officer, V.R.Section, High Court, Madras.

P. VELMURUGAN, J

cs

C.M.A.No.1514 of 2019

11.09.2023