



C.M.A.(MD)No.1181 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2023

Pronounced on : 22.08.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.1181 of 2017

and

C.M.P.(MD)No.11756 of 2017

P.Venugopal

... Appellant/
1st Respondent

Vs.

1. Vijaya @ Vijayalakshmi

... 1st Respondent/
Petitioner

2. The Branch Manager,
New India Assurance Co. Ltd.,
30, Swami Annan Pillaiyar Street,
Virudhunagar.

... 2nd Respondent/
2nd Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to call for the records relating to the judgment and decree dated 29.01.2013 in M.C.O.P.No.51 of 2008 on the file of Motor Accidents Claims Tribunal, Subordinate Court, Aruppukottai and set aside the same.



C.M.A.(MD)No.1181 of 2017

For Appellant : Mr.V.Sasi Kumar
For R1 : No appearance
For R2 : Mr.R.Suresh Kumar

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.51 of 2008 dated 29.01.2013 on the file of the Motor Accident Claim Tribunal/Subordinate Court, Aruppukottai.

2. The appellant/owner of the vehicle, who was made liable to pay compensation of Rs.91,000/- (Rupees Ninety One Thousand only) with interest at 7.5% per annum to the first respondent/claimant for the disability suffered by her, consequent to an accident occurred on 15.01.2008, challenged the liability mulcted on him and also the quantum of compensation awarded at, by the Tribunal.

3. Admittedly, the appellant is the owner of the vehicle, the first respondent is the claimant and the second respondent is the Insurance Company.



C.M.A.(MD)No.1181 of 2017

WEB COPY

4. The case of the first respondent is that on 15.01.2008 at about 09.00 a.m., the first respondent was walking towards her daughter's house at Kariapatti and while she was on the North South Aruppukottai – Kariapatti main road on the western side, the son of the appellant drove a Yamaha motor cycle bearing Registration No.TN-67-C-5724 in a rash and negligent manner from the rear side of the first respondent and dashed against her and as a result of which, the first respondent fell down and sustained injuries and that the accident was occurred only due to the rash and negligent riding of the two wheeler rider.

5. It is further case of the first respondent that after the accident, the first respondent was immediately taken to Kariapatti Government Hospital and thereafter, she was referred to Madurai Meenakshi Mission Hospital and that the first respondent was doing textile business and was earning Rs.5,000/- (Rupees Five Thousand only) per month.

6. The defence of the appellant is that on 15.01.2008 at about 09.00 a.m., when the appellant's son was riding a motor cycle in a steady and careful manner, the first respondent, without observing the traffic rules and without noticing the vehicle proceeding from the rear side,



C.M.A.(MD)No.1181 of 2017

WEB COPY

suddenly crossed the road and invited the accident and as such, the first respondent alone was responsible for the accident, that the first respondent has exaggerated her injuries making to appear those simple injuries as grievous and that the compensation claimed is very high and excessive.

7. The defence of the second respondent is that the accident was occurred only due to the negligent attitude of the first respondent, that the first respondent, in a negligent manner, unexpectedly tried to cross Kariapatti main road from West to East direction and that the two wheeler rider, in order to avoid the accident, applied brake, but the first respondent fell into the vehicle and sustained injuries.

8. It is further defence of the second respondent that the rider of the Yamaha Crux bearing Registration No.TN-67-C-5724 was not having valid driving licence at the time of accident and that therefore, the Insurance Company is not liable for the claim.

9. During trial, the first respondent has examined herself as P.W.1 and medical officer-Dr.Palanivelrajan as P.W.2 and exhibited 12 documents as Ex.P.1 to Ex.P.12. On the side of the appellant and the



C.M.A.(MD)No.1181 of 2017

WEB COPY

second respondent, two witnesses R.W.1 and R.W.2 were examined and two documents Ex.R.1 and Ex.R.2 were marked. 2 documents have been exhibited as Court documents as Ex.X.1 and Ex.X.2.

10. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 29.01.2013 holding that the accident was occurred only due to the rash and negligence of the two wheeler rider and that since the appellant allowed his minor son to ride the two wheeler and thereby committed violation of insurance policy, directed the appellant to pay compensation of Rs.91,000/- (Rupees Ninety One Thousand only) with interest at 7.5% per annum to the first respondent and dismissed the claim as against the second respondent. Aggrieved by the impugned award, the owner of the two wheeler has preferred the present appeal.

11. The learned counsel appearing for the appellant would submit that merely because the rider was a minor, it cannot be said that the accident was only on the negligence of the minor, that the Tribunal ought to have fixed the contributory negligence on both the first respondent and



C.M.A.(MD)No.1181 of 2017

WEB COPY

the two wheeler rider for the accident, that the first respondent has not chosen to examine any independent witnesses to show that the appellant's minor son was riding the motor bike in a rash and negligent manner and caused the accident, that the first respondent has also not produced any evidence to prove that she was doing textile business and was earning Rs.5,000/- (Rupees Five Thousand only) per month, that though the accident was occurred in 2008, P.W.2-medical officer has examined the first respondent and issued the Disability Certificate in 2012, that the amounts awarded for pain and suffering and other various heads are excessive, that the Tribunal has erred in deciding that since the first respondent had lost her cell phone, she is entitled to get a sum of Rs.8,000/- (Rupees Eight Thousand only) for loss of personal property and that therefore, the impugned order of the Tribunal is liable to be set aside.

12. The learned counsel appearing for the second respondent would submit that the appellant has not claimed any relief in the appeal to mulct liability on the second respondent, but instead prayed for setting aside the impugned order dated 29.01.2013 passed in M.C.O.P.No.51 of 2008 on the file of the Subordinate Court, Aruppukottai and that since the appellant has allowed his minor son to ride the two wheeler, the Tribunal has rightly



C.M.A.(MD)No.1181 of 2017

WEB COPY

mulcted liability on the owner of the two wheeler and as such, there is nothing to interfere with the order of the Tribunal.

13. It is pertinent to note that on the basis of the complaint lodged by the first respondent, FIR came to be registered against the appellant's minor son and after completing the investigation, charge sheet came to be filed against the appellant's minor son, that since he was a juvenile at that time, the jurisdictional Magistrate has forwarded the case to the Juvenile Justice Board and that after trial, the Juvenile Justice Board has found the rider of the motor cycle guilty of committing the offences under Sections 279 and 338 IPC and imposed fine on the juvenile's father, the appellant herein.

14. The first respondent, in her evidence before the Tribunal, has reiterated the contentions raised in the claim petition with regard to the mode of accident. P.W.1/first respondent would say in categorical terms that when she was walking on the North South road from South to North on the western side i.e., on the left side of the road, the two wheeler rider, who came in a rash and negligent manner, had hit her from the rear side. Though P.W.1/first respondent was subjected to lengthy cross-



C.M.A.(MD)No.1181 of 2017

examination, nothing was elicited by the other side in their favour. Though the appellant and the second respondent have alleged that the first respondent had suddenly attempted to cross the road and invited the accident, they have not produced any evidence to substantiate their claim. Considering the above, the finding of the trial Court that the accident was occurred only due to the rash and negligent driving of the two wheeler rider, cannot be found fault with.

15. No doubt, the second respondent has specifically admitted that the two wheeler owned by the appellant was insured with them and the policy was in force on the date of accident, but the main contention of the second respondent is that the rider of the motor cycle was not possessing valid driving licence at the time of accident and the owner of the vehicle, by allowing his minor son to ride the two wheeler, has violated the policy conditions and that therefore, they are not liable for the claim.

16. Section 4 of the Motor Vehicles Act contemplates that no person under the age of eighteen years shall drive a motor vehicle in any public place; provided that a motor cycle (with engine capacity not exceeding 50cc) may be driven in a public place by a person after attaining the age of



C.M.A.(MD)No.1181 of 2017

WEB COPY

sixteen years. As rightly observed by the Tribunal, the appellant's son had driven the Yamaha motor cycle, which does not come under the exempted category shown in Section 4 of the said Act. Since the appellant has permitted his son to drive his two wheeler without driving licence and more seriously, allowed a minor boy to ride the motor cycle and thereby, violated the rule of law and the policy conditions, the question of invoking the doctrine of pay and recovery does not arise at all.

17. Now turning to the quantum of compensation, it is evident from Ex.P.2-wound certificate that the injuries suffered by the first respondent on the right temporal region and left arm are grievous in nature. P.W.2-medical officer has given his opinion that the injuries caused on the right arm has caused severe neurology problem and fixed the disability at 28%. No doubt, P.W.2 had examined the first respondent and fixed the liability 5 years after the accident, but the fact remains that the first respondent has sustained injuries noted in the wound certificate due to the said accident. Considering the nature of the injuries and the consequent disability sustained, the Tribunal has rightly applied percentage method and granted Rs.28,000/- (Rupees Twenty Eight Thousand only) for disablement.



C.M.A.(MD)No.1181 of 2017

WEB COPY

18. The Tribunal, taking note of the medical bills, has rightly granted Rs.25,000/- (Rupees Twenty Five Thousand only) towards medical expenses. The Tribunal has also awarded Rs.25,000/- (Rupees Twenty Five Thousand only) for pain and suffering, Rs.5,000/- (Rupees Five Thousand only) for extra nourishment and Rs.8,000/- (Rupees Eight Thousand only) for loss of cell phone.

19. The learned counsel appearing for the appellant would say that there is absolutely no evidence to show that the first respondent has lost her cell phone in the accident.

20. Considering the nature of injuries, period of treatment and other attending circumstances, awarding of Rs.25,000/- (Rupees Twenty Five Thousand only) for pain and suffering cannot said to be excessive. But at the same time, the amount awarded at Rs.5,000/- (Rupees Five Thousand only) for extra nourishment is on lower side. Moreover, the Tribunal has not awarded any amount towards transport expenses and attendant charges. But at the same time, the first respondent is not entitled to get Rs.8,000/- (Rupees Eight Thousand only) for loss of cell phone.



C.M.A.(MD)No.1181 of 2017

WEB COPY

21. Considering the entire facts and circumstances of the case, the total compensation awarded at Rs.91,000/- (Rupees Ninety One Thousand only) is very much reasonable and the same cannot said to be excessive. Consequently, this Court decides that the appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

22. In the result, the Civil Miscellaneous Appeal is dismissed and the award dated 29.01.2013 passed in M.C.O.P.No.51 of 2008 on the file of the Motor Accident Claim Tribunal/Subordinate Court, Aruppukottai is confirmed. The appellant is directed to deposit the entire award amount with interest and costs, within a period of four weeks from the date of receipt of copy of this judgment, if not already deposited and on such deposit, the first respondent is permitted to withdraw the said amount, with interest and costs. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

22.08.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm



WEB COPY



C.M.A.(MD)No.1181 of 2017

K.MURALI SHANKAR,J.

csn

To:

1. The Motor Accident Claims Tribunal/Subordinate Court,
Aruppukottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Order made in
C.M.A.(MD)No.1181 of 2017
and
C.M.P.(MD)No.11756 of 2017

Dated : 22.08.2023