IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 17.07.2023

Judgment Delivered on : 29.02.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.260 of 2018
and
C.M.P.No.2903 of 2018

The Branch Manager,
Tata AIG General Insurance Company Limited,
Peninsula Business Park Tower-A, 15th Floor,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai-400 013. .. Appellant

Vs.

1. Saravanan, S/o Govindasamy

2. R.Settu, S/o Raj .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 01.08.2017 made in M.C.O.P.No.145 of 2015 on the file of the Motor Accidents Claims Tribunal (Court of Chief Judicial Magistrate), Dharmapuri.

For appellant : M/s.K.Vinod

For respondents: Mr.M.Selvam for R-1

R-2 - Notice served. No appearance

JUDGMENT

The first respondent herein/claimant has filed M.C.O.P.No.145 of 2015 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Dharmapuri, against the second respondent (owner of the offending vehicle) and the appellant/Insurance Company.

2. On 05.07.2014, when the claimant was riding as pillion-rider in the motor-cycle bearing Registration No.TN-24.H.2592 Hero Honda Splendour Plus with one Prakash Kumar, who proceeded on the said motor-cyle from Makkankottai to go to Dharmapuri and at about 3 p.m., when the said Prakash Kumar proceeded on the said motor-cycle on Pennagaram to Dharmapuri Main Road, near Nathahalli Bus Stop, came in a rash and negligent manner, dashed against the motor-cycle (Bajaj Pluser) bearing Registration No.TN-29.H.7380 and on account of the same, the claimant sustained grievous injuries. The said Prakash Kumar has sustained simple injuries. The accident had occurred only due to rash and negligent driving of

the said motor-cycle driven by the said Prakash Kumar. Subsequent to the accident, the claimant was admitted in Government Medical College Hospital, Dharmapurai as an in-patient, as he was unconscious and at that time, Indur Police had obtained statement from the near-by person Prakash Kumar against the opposite vehicle driver and registered a case against the opposite vehicle driver in Crime No.107 of 2014 under Sections 279 and 337 IPC without making proper enquiry.

3. It is stated by the claimant in the petition that immediately after the accident, he was taken to the Government Medical College Hospital, Dharmapuri and later admitted as an in-patient in Ganga Medical Centre and Hospital, Kovai and a surgery was performed and his left leg was amputated (near 2nd toe pulp). Subsequently, he was also treated in a private hospital, Dharmapuri.

4. The petitioner has claimed the compensation before the Tribunal under the following heads:

Sl.No.	***Head under which the amount is claimed***	***Amount claimed***
1	Medical expenses	2,00,000
2	Extra-nourishment	20,000
3	Transport	10,000
4	Future medical treatment	1,00,000
5	Pain and suffering, mental agony and permanent disablement	16,62,5000

But however, the claimant restricted his claim to Rs.10 lakhs only.

5. According to the claimant, the first respondent (before the Tribunal) as the owner and the appellant/Insurance Company being the insurer of the offending vehicle, are jointly and severally liable to pay the compensation to the claimant.

6. The second respondent herein did not appear before the Tribunal and hence, he was set ex-parte. Before this Court also, inspite of the name of the second respondent herein, having been printed in the cause list, he did not appear either in person, or through counsel.

7. Upon considering the submissions of either side and after trial/enquiry, the Tribunal awarded the compensation to the claimant, as below:

Sl.No.	***The head under which the Tribunal granted compensation***	***Amount (in Rs.)***
1	For 25% disability (25 x based on 1% for 3000) (25 x 3000)	75,000
2	Pain and suffering	25,000
3	Medical expenses	58,563
4	Transportation expenses	5,000
5	Nutrition and damages to articles	25,000
6	Depression	25,000
	Total	2,13,563

Aggrieved by the above quantum of compensation and the liability fastened on the Insurance Company, the present appeal is filed by the Insurance Company.

8. Learned counsel appearing for the appellant/Insurance Company

submitted that the claimant was discharged from the Government Hospital on 05.07.2014 (Saturday) itself, whereas, the Police obtained statement from him only on 06.07.2014 (Sunday), alleging that the motor-cycle was driven by one Prakash Kumar, which is false statement, for the reason that the FIR was registered based on the complaint which was obtained on 05.07.2014 (being Saturday). Though the claimant was discharged from the hospital on 05.07.2014, the Police could not have obtained statement from him on 06.07.2014 (Sunday) in the hospital. Even assuming without admitting for the sake of argument that such statement was obtained, the FIR was sent to the concerned Court only on next day, i.e. on 07.07.2014 (Monday). The Police would have sent the FIR showing Prakash Kumar as a person who drove the vehicle in which the claimant travelled as a pillion-rider. They might have modified the FIR by amending the name of the rider. Hence, the learned counsel for the appellant/Insurance Company submitted that the Tribunal failed to appreciate that the claimant was not brought to the hospital by the said rider Prakash Kumar, but was brought only by the father of the claimant, namely Mr.Govindasamy. There was no allegation in the FIR that the rider of the offending motor-cycle had run away, leaving the claimant in lurch.

9. Learned counsel for the appellant/Insurance Company further submitted that the claimant was unconscious at the time of accident. Admitted, there was no record or proof that the claimant was unconscious at the time of accident and it is not known as to on what basis the Tribunal gave such a finding. The manner of the accident as to who drove the vehicle, is within the realm of the claimant, who alone could state such facts. The accident was caused by third party-motor-cycle bearing Registration No.TN-29-H-7380. Further, the Tribunal went wrong in fastening the liability on the appellant/Insurance Company, which is not the insurer of the said offending vehicle, but whereas they are the insurer of the vehicle in which the claimant travelled. There is no evidence to prove as to whether one Prakash Kumar had valid driving licence or not, because the appellant/Insurance Company had let in evidence to substantiate such facts. It did not amount to the appellant/Insurance Company having admitted such fact that the vehicle in question, was driven by the said Prakash Kumar.

10. Learned counsel for the appellant/Insurance Company further contended that there was defect in the investigation and the Tribunal ought to have dismissed the claim petition as not maintainable for non-joinder of necessary parties, namely the rider/owner of the insurer of the motor-cycle bearing Registration No.TN-29.H.7380. The Tribunal proceeded on the mistaken-identity of the party and proceeded on the basis that the owner of the said motor-cycle TN-29-H-7380 was the first respondent (before the Tribunal). Hence, the Tribunal held that a wrong person had no connection with the said vehicle. The liability fixed by the Tribunal is wrong and the quantum of compensation awarded by the Tribunal under various heads, is also excess, and hence, the claim petition itself is liable to be dismissed, resultantly, the impugned Award passed by the Tribunal may be set aside and the present appeal may be allowed.

11. Learned counsel appearing for the claimant further submitted that the accident took place on 05.07.2014 at about 3 p.m. The claimant was only a pillion-rider in the motor-cycle (Hero Honda Splendour bearing Registration No.TN.24.H.2592), which was driven by one Prakash Kumar.

While the said vehicle was proceeding from Pennagaram towards Dharmapuri Main Road, near-by Nathahalli Bus Stop, the rider of the motor-cycle was riding the vehicle in a rash and negligent manner and at the same time, yet another vehicle which came in the opposite direction bearing Registration No.TN.29.H.7380 (Pulsar), hit the claimant, due to which, he sustained injuries all over his body. Since the rider of the motor-cycle in which the claimant before the Tribunal, was riding as a pillion-rider, was driven by one Prakash Kumar in a rash and negligent manner, and due to the impact, the accident had happened. Though a case was registered against the rider of another vehicle, namely motor-cycle Pulsar bearing Registration No.TN.29.H.7380, but however later, during investigation, from the statement which was recorded from the claimant and the witnesses, it is found that the accident had occurred only due to rash and negligent driving of the rider of the Hero Honda Splendour bearing Registration No.TN-24.H.2592, which was driven by the said Prakash Kumar, which belongs to the first respondent herein. The said vehicle was owned by the second respondent herein and the said vehicle was insured with the appellant/Insurance Company. Even otherwise, the accident had occurred due to rash and negligent driving of the rider of Hero Honda Splendour TN.24.H.2592. The claimant is only a pillion-rider and therefore, as insurer, the appellant/Insurance Company is liable to pay compensation.

12. As far as the claimant is concerned, he is a third party and he was not riding the vehicle at the time of accident and the claimant is only a pillion-rider. The Tribunal rightly appreciated the evidence and awarded compensation. Thus, the learned counsel for the claimant stated that there is no merit in the present appeal.

13. Heard both sides and perused the materials available on record.

14. The accident in this case is not in dispute. As far as the manner of the accident is concerned, according to the claimant, he was only a pillion-rider in which one Prakash Kumar was riding the vehicle that belongs to the second respondent herein, which is insured with the appellant/Insurance Company.

15. Though the appellant/Insurance Company had taken a stand that initially a case was registered against the rider of motor-bike Bajaj Pulsar bearing Registration No.TN-29.H.7380, since he did not have any licence/insurance, and, in order to get the compensation, subsequently they have changed the Vakalat.

16. Further, the claimant himself was riding the vehicle and he was only a tort-feasor of the accident and also since he did not have licence and the tort-feasor is not entitled for getting the compensation, subsequently, the Police have changed the FIR and made false claim, whereas, the Tribunal observed that though in the original FIR, it is mentioned otherwise, however, during the investigation, they have recorded the statement from the witnesses and based on the same, they have laid the charge-sheet only against the Prakash Kumar, who was the rider of the motor-cycle in question, in which, the claimant was riding only as a pillion-rider. The accident is only due to rash and negligent riding of the vehicle, namely Prakash Kumar and the claimant sustained injuries and since he is a pillion-rider, he is entitled to compensation.

17. It is settled proposition of law that the FIR is not an Encyclopaedia, that too, in the instant case, the person who sustained injuries, may be a dead person or the person who sustained injury is due to unconsciousness or any other reason, they could not give the statement to the Police directly, and therefore, some times, the name found in the FIR may be wrong due to the mistake of the statement given by the maker/informant of the FIR. But however, when the Police continued the investigation and laid the charge-sheet, they will form an opinion and after the investigation, they have laid the charge-sheet, which would reveal the actual facts. Even otherwise, the defect in the investigation may not be fatal to the case of the complainant. The Tribunal can always rely on the material evidence placed before it by considering the oral and documentary evidence, but not the Police records. Therefore, in this case, the first respondent/claimant, being an injured person, had deposed before the Court that at the time of the accident, one Prakash Kumar rode the motor cycle in which the claimant was only riding as a pillion-rider. The accident was only due to rash and negligent riding of the said Prakash Kumar. Though the said

Prakash kumar did not initially produce the licence, one of the defence taken by the appellant/Insurance Company is that the said Prakash Kumar did not have any valid licence, whereas, the witness has clearly stated that he had the licence and subsequently, a copy of the licence was also produced.

18. Therefore, on a reading of the entire materials available on record, and as the accident had occurred only due to rash and negligent driving of the said Prakash Kumar, while riding Hero Honda Splendour bearing Registration No.TN.24.H.2592, in which the first respondent/claimant was riding as pillion-rider and the said vehicle was insured with the appellant/Insurance Company and that it belongs to the second respondent herein, who did not appear before this Court either in person or through counsel, inspite of notice having been served by this Court.

19. Therefore, the Tribunal considered the entire oral and documentary evidence and the respondents herein have not proved the case otherwise, whereas the claimant has proved the case that the accident had

occurred only due to rash and negligent driving of the said vehicle that belongs to the second respondent, which is insured with the appellant/Insurance Company.

20. In the above facts and circumstances and considering the submissions made on either side, this Court does not find any reason to interfere with the findings rendered by the Tribunal in respect of the liability fixed by the Tribunal on the appellant/Insurance Company.

21. As far as the quantum of compensation fixed by the Tribunal, is concerned, it is seen that the claimant had not filed any appeal or Cross Objection before this Court.

22. On a perusal of the records, it shows that the claimant is now aged about 33 years and hence, the Tribunal rightly perused the oral and documentary evidence, based upon which, the Tribunal fixed the compensation.

23. The appeals sans merit and the same is liable to be dismissed.

24. The impugned Award passed by the Tribunal is confirmed. The appellant/Insurance Company is directed to deposit the entire compensation awarded by the Tribunal with accrued interest as on date, at the rate of 7.5% per annum from the date of claim petition till the date of payment, after adjusting the amount, if any already deposited. The entire compensation with accrued interest as on date and costs (as awarded by the Tribunal in the M.C.O.P), shall be deposited before the Tribunal within a period of three weeks from the date of receipt of a copy of this judgment.

25. On such deposit being made, the Tribunal is directed to calculate the above said compensation amount, including the accrued interest as on date and costs (as awarded by the Tribunal), etc., after adjusting the amount, if any already withdrawn by the claimant and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and

others).

26. With the above observations/directions, the present appeal filed by the Insurance Company, is dismissed. There shall be no order as to costs in the present appeal. Consequently, C.M.P. is closed.

29-02-2024

Index: Yes/no

Speaking Order: Yes/no

Neutral case citation: Yes/no

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To

1. Motor Accidents Claims Tribunal
   (Chief Judicial Magistrate), Dharmapuri.
2. The Section Officer, V.R.Section, High Court, Madras.

P.VELMURUGAN, J

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Pre-delivery Judgment in
C.M.A.No.260 of 2018

Judgment delivered on 29-02-2024