IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2024

CORAM:

THE HON'BLE MR. JUSTICE M. DHANDAPANI

C.M.A. No.4132 of 2019 and C.M.P. No.23356 of 2019

The Oriental Insurance Company Ltd.
11-12/30, D.S.P. Complex
Karur Main Road
Velayuthampalayam
Karur Disrict 639 117 ... Appellant

vs.

1. R. Vijaya

2. N. Bhupathi ... Respondents

Civil Miscellaneous Appeal filed under Section 178 of the Motor Vehicles Act, 1988, challenging the judgment and decree dated 12.02.2019 in M.C.O.P. No.624 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

For appellant	Mr. S. Senthil Kumar
For R2	No appearance
For R1	Not Ready in Notice

JUDGMENT

This civil miscellaneous appeal is directed against the judgment and decree dated 12.02.2019 passed in M.C.O.P. No.624 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal (for brevity "the Tribunal").

2. For the sake of convenience, the parties will be referred to as per their rank in this civil miscellaneous appeal.

3. Facts in brief:

3.1 On 16.06.2013, about 6.00 p.m., the first respondent/claimant was going from Singilipatti to Podanur as a pillion rider in the two wheeler owned by second respondent and ridden by one by name Marimuthu. While so, when the rider, who was riding the two wheeler in a rash and negligent manner, applied sudden brake near Raja Thirumana Hall, in order to avoid collision with the vehicle coming in the opposite direction, he lost his balance and fell down and owing to the said accident, the first respondent/claimant sustained grievous injuries. Hence, seeking a total compensation of Rs.5 lakhs from the appellant/Insurance Company with which the two wheeler was insured, the first respondent/claimant filed a claim petition before the Tribunal.

3.2 Before the Tribunal, the stand of the appellant/Insurance Company was that rider of the two wheeler did not have a valid driving licence and three persons were travelling in the two wheeler which is against the terms of insurance policy and hence, the first respondent/claimant who was a pillion rider, is not liable to be compensated by the appellant/Insurance Company but only by the second respondent/owner of the two wheeler.

3.3 Before the Tribunal, the first respondent/claimant examined 2 witnesses and marked 10 exhibits. For its part, the appellant/Insurance Company examined 1 witness and marked two exhibits.

3.4 The Tribunal, after hearing the learned counsel for the appellant/Insurance Company and the first respondent/claimant, fixed 10% negligence on the part of the first respondent/claimant and 90% negligence on the part of the rider of the two wheeler. The Tribunal further held that it is only the appellant/Insurance Company which should pay compensation to the first respondent/claimant. Coming to quantum of compensation, the Tribunal awarded sums of Rs.6,000/- towards partial loss of income during the period of hospitalisation @ Rs.3,000/- per month, Rs.5000/- for transport expenses, Rs.10,000/- towards extra nourishment, Rs.64,940/- towards medical expenses, Rs.35,000/- towards pain and suffering and Rs.96,000/- towards 32% permanent disability @ Rs.3,000/- per percentage of permanent disability. In all, a sum of Rs.2,16,940/- was fixed by the Tribunal as total compensation. However, inasmuch as the first respondent/claimant was negligent to an extent of 10%, deducting 10% of Rs.2,16,940/-, it was held by the Tribunal that the first respondent/claimant is entitled to a sum of Rs.1,95,246/- plus interest @ 7.5% from the date of the petition till the date of deposit. It is to be noted that before the Tribunal, the second respondent/owner of the two wheeler was set *ex parte*.

3.5 Thereagainst, the Insurance Company has preferred this civil miscellaneous appeal.

4. Heard the learned counsel for the appellant/Insurance Company and perused the materials available on record.

5. The main plank of contention of the learned counsel for the appellant/Insurance Company is that the "Act only" policy covers only third parties and the first respondent/claimant being a pillion rider, is not eligible for compensation. The other contention of the learned counsel for the appellant/Insurance Company is that the reliance placed by the Tribunal on the judgment of the Full Bench of Kerala High Court in **Oriental Insurance Company vs. Ajayakumar [(1999) ACJ 1499]** to hold that even a gratuitous passenger is entitled to be compensated under 'Act only' policy, is erroneous.

6. Having heard the learned counsel for the appellant/Insurance Company, let me now appraise the impugned judgment of the Tribunal.

7. The two main points for consideration in this civil miscellaneous appeal are whether the appellant/Insurance Company is liable to make good the loss notwithstanding the fact that the two wheeler of the second respondent was covered only by "Act only" policy and whether the compensation of Rs.1,95,246/- awarded by the Tribunal to the first respondent/ claimant is exorbitant warranting reduction.

8. At the outset, it is to be pointed out that the Tribunal has not placed reliance merely on the Full Bench of Kerala High Court in **Ajayakumar**, *supra* but also on the 3 Judge Bench judgment of the Supreme Court in **Amrit Lal Sood and another vs. Kaushalya Devi Thapar and others [(1998) ACJ 531]**, wherein, while interpreting Section 95 of the Motor Vehicles Act, 1939, it was held in no uncertain terms that third parties, even be it a pillion rider are entitled to be compensated. Thus, the contention of the appellant/Insurance Company that wrong reliance has been placed by the Tribunal on **Ajayakumar**, *supra*, and, therefore, no compensation is payable is wholly erroneous.

9. Coming to the quantum of compensation awarded by the Tribunal, it is not in dispute that the first respondent/claimant sustained grievous injuries in the accident that took place on 16.06.2013. The first respondent/claimant was treated as an inpatient for close to a fortnight in C.M. Hospital, Namakkal. The medical bills marked before the Tribunal to the tune of Rs.64,940/- would only further fortify the injuries sustained by her and the treatment undergone by her. For a person who was hospitalised as an inpatient for nearly a fortnight, award of Rs.35,000/- towards pain and suffering cannot be said to be on the higher side. Further, the amounts awarded under the heads transport expenses, loss of income during the period of hospitalisation and extra nourishment, stated in paragraph 3.4, *supra*, also are quite reasonable. Thus, the only head now left over is permanent disablement. The Tribunal has awarded a sum of Rs.96,000/- towards this head. This figure is arrived at by taking the monthly income of the first respondent/claimant as Rs.3,000/- (Rs.150 per day x 20 working days per month) and arriving at the percentage of permanent disablement at 32% on the basis of Ex.P.10 (disability certificate) issued by P.W.2, doctor, who issued such certificate. While accepting the percentage of permanent disablement determined by P.W.2, doctor, a Coordinate Bench judgment of this Court in **Managing Director, TNSTC vs. Kapil Jothi @ Jothi**, wherein, it was held that in the absence of any contra evidence, disability assessed by a

qualified doctor should be accepted, had weighed in the mind of the Tribunal. In such perspective of the matter, it cannot be stated by any stretch of imagination that the course adopted by the Tribunal in awarding a sum of Rs.96,000/- towards 32% permanent disablement is erroneous, as contended by the learned counsel for the appellant/Insurance Company.

10. In view of the above discussion, this civil miscellaneous appeal fails and is accordingly dismissed and the impugned judgment and decree of the Tribunal are confirmed. The appellant is directed to deposit the compensation of **Rs.1,95,246/-** awarded by the tribunal to the credit of M.C.O.P. No.624 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the Tribunal is directed to transfer the said amount to the first respondent / claimant directly to his bank account through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

07.11.2024

Index : Yes / No

Netrual Citation Case : Yes / No
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To

1. The Motor Accident Claims Tribunal
Chief Judicial Magistrate Court
Namakkal

2. The Section Officer, V.R.Section, High Court, Madras.

M. DHANDAPANI, J.

RAP

C.M.A. No.4132 of 2019

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