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C.M.A. No. 3470 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3470 of 2021

United India Insurance Co. Ltd.,
Third Party Hub, Silingi Building,
No.134, Greams Road,
Murugesanaicker Street,
Chennai - 600 006.

... Appellant / 2nd Respondent

Vs.

1. Hariharan ... 1st Respondent / Petitioner
2. Senthamarai Kannan ... 2nd Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 14.12.2020 passed in M.C.O.P. No. 5155 of 2018 on the file of the VI Judge, Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : M/s. L. Ramanathan

For R1 : M/s. Amar D. Pandiyan

For R2 : No Appearance



JUDGMENT

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This Civil Miscellaneous appeal has been filed by the Insurance Company challenging the liability fixed on them to indemnify the first respondent in M.C.O.P. No. 5155 of 2018, dated 14.12.2020 on the file of the VI Judge, Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 14.07.2018, at about 7:30PM, the claimant, who is the son of the first respondent, was travelling as a pillion rider in the first respondent's TVS Wego motorcycle bearing Registration No.TN-13-AL-1451 along with two other persons, the motor cycle was ridden by one Keerthivasan in a rash and negligent manner without observing the traffic rules from east to west, while they reached near Ritherdon Signal junction, EVR Road, Chennai, due to rash and negligent riding of the Keerthivasan, who rode the motor cycle in a zig zag manner, dashed against a car bearing Registration No.TN-18-AM-5431 proceeding from west to east, thereby the



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claimant sustained grievous injuries. A criminal case was registered in the Cr.No.274/j1/2018 on the file of D6-Anna square Traffic Investigation, Chinthatharipet, Chennai. For the injuries sustained, the claimant has filed a claim petition against the owner and insurer of the TVS Wego motorcycle seeking compensation for a sum of Rs.20,00,000/- under section 166 of the Motor Vehicles Act.

4. The first respondent is the owner of the TVS Wego motorcycle bearing Registration No.TN-13-AL-1451 has not contested the claim and remained ex-parte. The second respondent - insurance company, who is the insure of the said TVS Wego motorcycle filed a counter and contended that the rider was not having a valid driving licence and the accident was also taken place by involvement of a car, whereas the owner of the car was not impleaded as party, hence stated the claim petition is not maintainable. The insurance company also contended the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, the claimant himself examined as P.W.1



and Exs.P.1 to P.12 were marked and the Medical Board Report of the claimant is marked as Ex.C.1. On the side of the second respondent - insurance company, R.W.1 was examined and Exs.R.1 to R.4 were marked.

6. The Tribunal after considering the evidences placed on record, in point no.1, has held that the rash and negligence on the part of the rider of the first respondent's motorcycle is responsible for the accident. In point nos.2 and 3, the Tribunal has quantified and granted compensation for a sum of Rs.3,86,105/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization. In point no.4, the Tribunal has fixed the liability on the part of the second respondent - insurance company to indemnify the first respondent, who is the owner of the TVS Wego motorcycle and to pay compensation to the claimant and to recover the same from the first respondent.

7. Aggrieved over the award, the insurance company has filed this appeal, challenging the liability fixed on the them to indemnify the first respondent and on the ground that three persons were travelled in the motor cycle at the time of accident and there is a violation of policy condition.



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8. The learned counsel appearing for the insurance company submitted that there is ample evidences to show that the claimant has travelled as a pillion rider along with three persons, at the time of accident and he is also the son of the first respondent, who is the owner of the motor cycle, hence, he is not entitled to get compensation. Since the claimant, who is borrower of vehicle, steps into the shoes of the owner of the two wheeler, he is not entitled to get any compensation. Further, he has allowed three persons to travel in the motorcycle and the rider of the motor cycle has no valid driving licence at the time of occurrence, insurance company is not liable to pay compensation and to indemnify the first respondent.

9. The learned counsel appearing for the claimant submitted that, it is true that three persons were travelled in the motorcycle, but the same is not the reason for the accident. The accident was happened only due to the negligent riding by the rider of the motorcycle, in which the claimant travelled as a pillion rider, further submitted that there was a coverage for the pillion rider in the insurance policy, therefore, the Tribunal has rightly awarded compensation, hence prays to confirm the award.



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10. I have considered the submissions made on both sides and perused the materials available on record.

11. It is the admitted case of the claimant that, he is the son of the first respondent, who is the owner of the motorcycle and according to him, while he was travelling in the motorcycle along with two other persons, the accident has taken place. He has also admitted that the motorcycle was ridden by his friend Keerthivasan in a rash and negligent manner, which resulted in accident. The Ex.P.1 - FIR, also shows that immediately after the accident, the car driver lodged a complaint stating that the rider of the two wheeler has negligently ridden the same and invited the accident.

12. I have carefully scrutinized the evidence of P.W.1, and according to him, he was a pillion rider and his friend has ridden the motorcycle in a rash and negligent manner and hit on the car. He has not stated that due to three persons travelled in the motorcycle, has occurred. Similarly, there was no evidence produced by the respondent that the accident was happened, since three persons travelled in the motorcycle. The



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evidence of R.W.1 - Insurance Official and Ex.P.1 - FIR corroborates the evidence of P.W.1 that the rash and negligence of the rider of the motorcycle is responsible for the accident.

13. The case of the appellant is that the claimant has also contributed to the accident, but there is no evidence adduced by the appellant - insurance company for implicating the claimant for his contributory negligence other than admitting three persons to travel along with him. This Court is not able to accept the case of the appellant that there is a contributory negligence on the part of the claimant herein. It is also the admitted case of the insurance company that there was a coverage for the pillion rider and in this case, the injured is a pillion rider and as per the policy coverage, he is entitled to get compensation for the injuries sustained by him. Even though, it is stated that the claimant herein is the son of the first respondent, who is the owner of the offending motorcycle, this Court is of the view that there is no negligence on the part of the claimant herein and he has not ridden the vehicle at the time of accident, hence the contention of the appellant, that he is not entitled to get compensation is not sustainable and accordingly, this appeal is hereby rejected.



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14. With regard to quantum of compensation, considering the age, date of accident, nature of injuries, period of treatment and disability sustained by the claimant, the Tribunal has awarded a just and reasonable compensation, hence this Court is inclined to confirm the same.

15. In the result, this civil miscellaneous appeal is dismissed and the award of the Tribunal is hereby confirmed. The appellant - insurance company is directed to pay the compensation to the claimant along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.5155 of 2018 on the file of the VI Judge, Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. The appellant / insurance company is given liberty to recover the same from the first respondent, as per the award of the Tribunal. There shall be no order as to costs in the present appeal.



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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The VI Judge,
Motor Accident Claims Tribunal,
IV Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.

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