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(2010) 07 MAD CK 0273

In the Madras High Court

Case No : C.M.A. NPD. No. 2548 of 2005

The Oriental Insurance Co. Ltd. APPELLANT

Vs

R. Vinod Kumar rep. by his Father/Natural Guardian Rajan and P. Sathya Moorthy @ Ravi RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 14, 141, 149, 149(2), 15

Citation : (2010) 07 MAD CK 0273

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : J. Chandran, for the Appellant; L. Mouli, R1, for the Respondent

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Oriental Insurance Company Limited against the award dated 27.12.2004 made in MCOP No. 87 of 2004 by the Motor Accident Claims Tribunal (II Additional Subordinate Judge) Coimbatore.

2. Background facts in a nutshell are as follows:

One minor Vinod Kumar, met with motor vehicle accident on 20.5.2001 at about 5.15 p.m., He was travelling along with his grand father Arumugam by sitting on his lap as pillion rider in a TVS 50 Moped. When the said Moped was driven by one Pandian from onappalayam to Kalpana Theatre Junction, Koundampalayam, a transport lorry bearing Registration No. TN 45-Z-2769 owned by the second respondent and insured with the appellant/Insurance Company, came in a rash and negligent manner at a high speed and hit against the TVS 50 Moped. Due to said the impact, the minor claimant thrown out of the vehicle and sustained grievous injuries. The minor claimant claimed a compensation of Rs. 9,00,000/- before the Tribunal. The appellant/Oriental Insurance Company Limited resisted the claim. On pleadings, the following issues were framed by the Tribunal:

a) Whether the accident had occurred due to the negligence on the part of the lorry driver or the rider of the motor cycle in which the claimant was travelled?

b) Whether the claimant is entitled to compensation from the respondents?

If so, what is the amount and from whom?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the lorry belonging to the second respondent and awarded a compensation of Rs. 2,50,000/- with interest at 9% p.a. from the date of petition. The details of the compensation are as under:

Rs. Grievous injuries 25,000/ - Disability 50,000/ - Medical expenses 10,000/ - Extra Nourishment 5,000/ - Transport charges 1,000/ - Damages towards articles 1,000/ - Future earning capacity 1,00,000/ - Permanent disability 58,000/ - ----------- Total 2,50,000/ - -----------

Aggrieved by that award, the Insurance Company has filed the present appeal.

3. Learned Counsel appearing for the appellant/ Insurance Company contended that the Tribunal is wrong in holding that both the Insurance Company and the owner of the Lorry were jointly or severally liable to pay the compensation. He further contended that the driver of the lorry has not possessed any valid licence at the time of accident. Therefore, the insurance company is not liable to pay the compensation and relied on the decision reported in S. Latha Devi v. M. Kamalanathan 2009(4) L.W. 484 and also further contended that the Tribunal has awarded excessive and exorbitant compensation without any basis and justification. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. The Learned Counsel appearing for the first respondent/claimant would submit that the Tribunal has considered all the facts of the case and awarded a just, fair and reasonable compensation. Hence the award of the Tribunal is in accordance with the law and hence the same has to be confirmed.

5. Heard the Counsel and perused the documents available on record. On the side of the minor claimant. P.Ws 1 and 2 were examined and Exs P1 to P6 were marked. P.W.1 is the father of the claimanant. P.W.2 is his grand father. Ex P1 is the First Information Report; Ex P2 is the Inspector''s report; Ex P3 is the charge sheet;Ex P4 is the Accident Register;Ex P5 is the Certificate given by Oriental Insurance Company and Ex P6 is the Case sheet given by the Coimbatore Government Medical College Hospital, Coimbatore. On behalf of the appellant/ Insurance Company one Sivakumar was examined as R.W.1 and marked Ex R.1- driving licence and Ex. R2 Insurance Policy and certificate. After considering the oral and documentary evidence, the Tribunal has given categorical finding that the accident had occurred due to rash and negligent driving of the driver of the lorry. There is no dispute regarding the same. The Learned Counsel appearing for the appellant submitted that the driver of the lorry does not possess any valid

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licence at the time of the accident. The licence was expired on 9.3.1998 and further it was renewed from 5.5.1998. Thereafter, the said licence has not been renewed. But the accident occurred only on 20.5.2001.There is no material on record to show that whether subsequently the licence has been renewed or not after 4.5.2001. Hence, the licence was expired on 4.5.2001. The Learned Counsel appearing for the appellant/Insurance company vehemently contended that the driver of the lorry does not possess valid licence at the time of the accident and therefore, the owner of the vehicle alone is liable to pay the compensation. The Learned Counsel appearing for the claimant relied on a decision of a Division Bench of this Court in S. Latha Devi v. M. Kamalanathan 2009(4) L.W.484 wherein considering the scope of Section 14 of the Motor Vehicles Act, a Division Bench has held that when Section 3 of the Act uses the words Effective Licence and the proviso to Section 14 says that the licence continues to be effective for a period of 30 days, the statute cannot be ignored. Therefore, this Court held in paragraph 6 of the said decision as follows:

As regards the first point that the driver of the insured vehicle did not sustain an effective licence, we are afraid, we have to reject this contention in view of the clear language of Section 14 of the Motor Vehicles Act. Section 14 reads thus:

14. Currency of licences to drive Motor vehicles (1)....

(2) A driving licence issued or renewed under this Act shall

(a) ....

(b) ....

Provided that every driving licence shall, notwithstanding its expiry under this Sub-section, continue to be effective for a period of thirty days from such expiry.

In this case, the dates have already been given. Therefore, until 27.8.98, the licence continued to be ''effective''. It does not matter in the least whether subsequently the driver had made an application for renewal of the licence. That may be relevant in cases where the accident took place more than 30 days after the expiry of the licence. In this case, that question does not arise. The Learned Counsel for the insurance company referred to the decision of the Supreme Court in Ishwar Chandra and Ors. v. The Oriental Insurance Co., Ltd. 2007 SAR (Civil) 339 : 2007(2) L.W.733, where the Supreme Court had dismissed the appeal filed by the claimants on the ground that "as on the said date, the renewal application had not been filed, the driver did not have a valid licence on the date when the vehicle met with the accident.'' In that case, the facts were different. The accident took place on 28.4.95 whereas the licence of the offending vehicle had long expired on 27.8.94 and the 30 days period mentioned in Section 14 had long lapsed. In that case, the Supreme Court had referred to the earlier decision in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , wherein it is observed in paragraphs 42 to 46 as follows:

42. We may also take note of the fact that whereas in Section 3 the words used

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are "effective licence", it has been differently worded in Section 149(2) i.e., "duly licensed". If a person does not hold an effective licence as on the date of the accident, he may be liable for prosecution in terms of Section 141 of the Act but Section 149 pertains to insurance as regards third party risks.

43. A provision of a statute which is penal in nature vis-a-vis a provision which is beneficent to a third party must be interpreted differently. It is also well known that the provisions contained in different expressions are ordinarily construed differently.

44. The words "effective licence" used in Section 3, therefore, in our opinion, cannot be imported for Sub-section (2) of Section 149 of the Motor Vehicles Act. We must also notice that the words "duly licensed" used in Sub-section (2) of Section 149 are used in the past tense.

45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor.

Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry.

Therefore, when Section 3 of the Act uses the words "effective licence" and the proviso to Section 14 says that that the licence continues to be effective for a period of 30 days, we cannot ignore the statute. We hold that notwithstanding the expiry of the licence, it was effective. Therefore, we reject the objection made on behalf of the insurance company that the driver of the offending vehicle did not have an effective licence on the date of the accident.

6. The Learned Counsel appearing for the appellant/Insurance Company relied on the decision of Supreme Court in the case of Bhuwan Singh v. Oriental Insurance Company Ltd. 2009(1) TNMAC 487(SC), it was held that when there is no ''effective licence'' on the date of accident, the Insurance Company is not liable to pay any compensation. But, in the Judgment, the scope of the provision of Section 14 of the Act was not brought to the notice and the same was not considered. Therefore, the principles enunciated in the Division Bench Judgment

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of this Court in the case of S. Latha Devi v. M. Kamalanathan (cited supra) squarely applies to the facts and circumstances of the present case. Following the said Judgment, the contention of the Insurance Company that the driver of the vehicle does not have a valid licence, and is liable to be rejected.

7. The claimant was minor aged about 11 years at the time of accident. He was a student in St. Antony''s R.C. Boys High School, Puliankulam, Coimbatore and was studying VI Standard. P.W.1 is the father of the minor injured. He deposed in his evidence that the accident had occurred only due to rash and negligent driving of the driver of lorry. P.W.2, who is the grand father of the minor injured and eye witness of the accident has deposed in his evidence that the accident was occurred only due to rash and negligent driving of the driver of the lorry. He further stated that the driver of the lorry was also charge sheeted by Thudiyalur Police Station in Cr. No. 341/2001 on 21.5.2001. Ex P4 is the Accident Register given by the Coimbatore Government Medical College Hospital, Coimbatore, in which, it is stated that the injured sustained grievous injury on his right leg and all over the body and his right leg below knee was amputated. There is no dispute regarding the same and also Ex P6 case sheet contained the details given by the same hospital. The Supreme Court recently considered the scope of injury affecting the earning capacity, in the case of Sri B.T. Krishnappa Vs. The Divisional Manager, United Insurance Company Ltd. and Another, , wherein in paragraphs 16 to 19 it has been held as follows:

16. In the case of The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another, , where the claimant was also a mason, this Court held that:

...It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired.... (at page 204, Para 15).

17. Long expectation of life is connected with earning capacity. If earning capacity is reduced, which is the case in the present situation, that impacts life expectancy as well.

18. Therefore, while fixing compensation in cases of injury affecting earning capacity the Court must remember:

...No amount of compensation can restore the physical frame of the appellant. That is why it has been said by Courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal

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deprivations. Money cannot renew a broken and shattered physical frame. See R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , at page 556, Para 10)

19. Further, the Court in the same case also held that

In its very nature whenever a tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.(at Page 557, para 12)

In the present case, the amputation of leg would certainly affect the future earning capacity of the injured child and further due to the amputation, the said injured cannot play like any other child and cannot sit or walk without any support, which certainly affects the future prospects. In the case of Asraf Alli Vs. Naveen Hotels Ltd. and Another, , the Supreme Court considered the scope of the left lower limb amputated and the percentage of loss of earning capacity at 60% of monthly income in terms of Schedule-I, Pt.II, Entry 19, Workmen''s Compensation Act, 1923 and awarded a sum of Rs. 3,24,000/ - towards loss of future earning capacity. But in the present case, the Tribunal awarded Rs. 25,000/ - towards grievous injury; Rs. 50,000/ - towards permanent disability; Rs. 1,00,000/ - towards future earning capacity; and Rs. 58,000/ - towards permanent disability and altogether a sum of Rs. 2,33,000/ - under different heads. The Learned Counsel appearing for the appellant-Insurance company vehemently contended that the Tribunal is wrong in awarding compensation under different heads for the amputation of right leg below the knee. After considering the principles enunciated in the above judgment and the claimant was aged about 11 years and his right leg below the knee was amputated, which certainly affects the earning capacity and future prospects, it is reasonable to award a sum of Rs. 2,00,000/ - towards loss of earning capacity due to permanent disability as against Rs. 2,33,000/ - awarded by the Tribunal under different heads. The Tribunal has awarded a sum of Rs. 10,000/ - towards medical expenses. After taking into consideration, the nature of the injury sustained, I feel that the amount awarded is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 5,000/ - towards extra nourishment, a sum of Rs. 1,000/ - towards transport charges and a sum of Rs. 1,000/ - towards damages to clothes. The amounts awarded under these heads are very reasonable and the same are confirmed. The Tribunal has not awarded any amount towards expenses incurred for fixing the artificial limb. Taking into consideration, the age of the boy, this Court awards a sum of Rs. 30,000/ - towards fixing the artificial limb. The Tribunal has not awarded any amount towards pain and suffering and it would be reasonable to award a sum of Rs. 3,000/ - towards pain and suffering. The interest rate awarded by the Tribunal is 9% p.a. from the date of petition. Taking into consideration, the date of accident i.e., 20.5.2001 and also prevailing rate of interest during that period, the interest

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awarded by the Tribunal is very reasonable and the same is confirmed. The compensation of the Tribunal is modified as under

Rs. Permanent disability 2,00,000 Fixing the artificial limb 30,000 Medical expenses 10,000 Extra nourishment 5,000 Transport charges 1,000 Damages to clothes 1,000 Pain and suffering 3,000 -------- Total 2,50,000

In this case, only heads alone changed and the award amount stands unaltered. Therefore, the award passed by the Tribunal is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs.

8. It is brought to the notice of this Court that the respondent/claimant has become major and the same has been declared as per order of this Court in C.M.P. No. 1421 of 2009 dated 8.2.2010.It is stated by the Learned Counsel appearing for the appellant/ Insurance Company, the entire award amount has already been deposited by the Insurance Company as per the order of this Court passed in C.M.P. No. 13356 of 2005 on 22.8.2005. Under these circumstances, the claimant/injured is permitted to withdraw the entire award amount with interest at the rate of 9% p.a on making proper application after deducting the amount already withdrawn.

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