

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

<b>Reserved on:</b> 06.01.2022	<b>Delivered on:</b> 03.03.2022
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CORAM:

**THE HONOURABLE TMT.JUSTICE S.KANNAMMAL**

C.M.A.No.2184 of 2018

Irfan

.. Appellant

**Vs.**

1. K.S.Kumaran

2. The New India Assurance Co. Ltd.,  
No.45, 2<sup>nd</sup> line beach,  
Moores street, Chennai – 600 001.

.. Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree, dated 24.03.2017 made in M.C.O.P.No.77 of 2013 on the file of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai.

For Appellants : Mr.A.N.Viswanatha Rao

For 2<sup>nd</sup> Respondent : Mr.J.Chandran  
No appearance (for R1)

**J U D G M E N T**

The Civil Miscellaneous Appeal is filed by the claimant, who was a minor by then, aggrieved by the Order dated 24.03.2017 passed in MCOP NO.77 of 2013 on the file of the IV Small Causes Court, Chennai.

2. According to the appellant/claimant, on 25.09.2010 at about 15.50 hours, when he was riding a Motor Cycle bearing Reg No.TN 10 L 5513 at Dr Natesan Road, near 24 Hours Hospital, Chennai, an Auto Rickshaw bearing Reg No.TN 06 C 0429 was driven by its driver in a rash and negligent manner and hit the two wheeler driven by him. In the impact, the appellant sustained the following grievous injuries:

- i Fracture on the head of 4<sup>th</sup> toe
- ii Grade-I Fracture Right Forearm
- iii Fracture of Lateral Epicondyle in humerus
- iv Laceration of Liver
- v Multiple injuries all over the body

3. The claimant was admitted as in-patient in Government General Hospital, Chennai on 25.09.2010 and discharged on 29.09.2010. Admittedly, the appellant was minor at the time of accident. For the injuries sustained by

him, he has filed the claim petition claiming a sum of Rs.7 lakhs as compensation against the driver of the Auto Rickshaw and its Insurer.

4. The claim petition was vehemently opposed by the second respondent Insurance Company mainly on the ground that the claimant is not entitled to ride the two wheeler in as much as he was minor at the time of accident. Therefore, the policy condition has been violated by the owner of the vehicle in whose favour the insurance policy stands. The amount of compensation claimed by the claimant is exorbitant and fanciful. Therefore, the second respondent / Insurance Company prayed for dismissal of the claim petition.

5. Before the Tribunal, the Claimant examined himself as P.W.1 and two other witnesses were examined as P.Ws.2 and 3. Exs.P1 to P13 were marked on the side of the claimant. On the side of respondents, one V.Ramachandran, was examined as R.W.1 and a photo copy of the Investigation report was marked as Ex.R1.

6. The Tribunal dismissed the claim petition by taking note of the admission of the claimant himself. The claimant, as P.W.1, has admitted that he has driven the two wheeler without driving license. His admission was also

corroborated by Ex.R1, Investigation Report. Further, the Tribunal relied upon the decision of the Hon'ble Supreme Court in *United India Insurance Co. Ltd., Vs. Sunil Kumar and another* reported in *2013 (2) TN MAC 737 (SC)*, wherein the Hon'ble Supreme Court held that the petitioner who was minor at the time of accident, has no right to drive the vehicle but has driven the vehicle without license and thereby violated the conditions of the Motor Vehicle Act and invited the accident on his own. It was further held by the Hon'ble Supreme Court that as the minor himself driven the vehicle without licence and caused accident, the tort-feasor is not entitled for compensation. By placing reliance on the aforesaid decision of the Hon'ble Supreme Court, the Tribunal dismissed the claim petition and refused to award any compensation to the claimant.

7. The learned counsel for the appellant would, at first, contend that in the accident, the appellant has sustained fracture on the head of 4<sup>th</sup> toe, fracture of 1<sup>st</sup> Metatarsal, facial injury and lost 10 teeth. Two Doctors examined him and assessed 25% of Ortho disability and 40 % of dental disability since the appellant has fixed prosthesis for 10 teeth. The learned counsel would further submit that the Tribunal ought to have awarded a reasonable amount as compensation for the injuries sustained by the appellant without going by technicalities. Furthermore, the counsel for the appellant brought to the notice

of this Court Section 163 A of Motor Vehicle Act which states that notwithstanding anything contained in the Act or any other law for time being in force, the owner of the motor vehicle or the insurer shall be liable to pay compensation due to the accident arising out of the usage of the motor vehicle. Therefore, it is contended by the learned counsel for the appellant that the legislative intention does not prohibit the appellant from seeking compensation. He further submits that Motor Vehicle Act is a benevolent legislation intended to add succor to the victims of motor accident for bodily injuries suffered by them. The Tribunal without taking note of the above has erroneously dismissed the claim petition and therefore he prayed for awarding appropriate compensation to the claimant.

8. On the above contention of the counsel for the appellant, this Court heard the learned counsel for the second respondent-Insurance Company who justified the award passed by the Tribunal and prayed for dismissal of this appeal.

9. This Court heard the learned counsel appearing on either side and perused the materials placed on record.

10. It is not in dispute that the appellant was a minor at the time of accident. Even before the Tribunal, the appellant himself admitted that he was minor at the time of accident. Thus, there is a clear bar and embargo for the appellant to drive the vehicle even before attaining the majority or in the absence of driving licence issued by the competent authority as has been enunciated under Section 4 of the Motor Vehicles Act. Section 4 of the said Act reads thus:-

*“4. Age limit in connection with driving of Motor vehicles.-*

*(1) 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 sixteen years.*

*(2) Subject to the provisions of Section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.*

*(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under the Section.*

11. This Court also takes judicial notice of the fact that juvenile driving is on the rise in our State and it is not encouraging. Innocent lives are being lost or impaired at young age, much to the chagrin of the law makers and the society as a whole. Instances are galore that teen-age boys indulge in bike racing without any impunity, with utter disregard to the safety of other road users. Therefore, it is high time that there should be an effective implementation of the Motor Vehicles Act to curb the menace of underage driving. This Court hopes and trust that ways and means will be found by the law enforcing agencies so that there may not be any such recurrence of the adolescent getting entangled in untoward incidents of motor vehicle accidents and suffer silently, like the appellant in this appeal.

12. In this Context, this Court is fortified by a decision of this Court rendered in Criminal Revision Case No. 1396 of 2006 dated 03.10.2012 in the case of *Karnan vs. State represented by Inspector of Police, Traffic Wing, Salem* reported in *(2012 (4) MLJ (Crl) 677* wherein this Court, dishearteningly noted that there is a burgeoning cases of traffic violation and it has to be curbed with iron hands. Useful reference to the observations made by this Court in para No.10 is extracted hereunder:-

10. *Before parting with, this Court feels that because of the rash and negligent driving of the motor vehicles by its drivers, valuable human lives are lost or large number of men and women suffer physical disability due to such accidents. The future of the victims of the road accidents is shattered and become meaningless. In a Country like India, which witness burgeoning population, not a single day passes without a road accident. The cause for accident is mainly due to rash and negligent driving. The drivers of motor vehicle seldom follow the traffic Rules. The traffic rules are breached more, than in compliance. Therefore, it is high time that the traffic offenders have to be dealt with an iron hand. In all other countries, other than India, whenever an accident takes places, the same will be recorded in the driving licence of the driver or necessary endorsement will be made in the driving licence to show his antecedent. Thus, whenever a second accident takes place, the endorsement recorded or made in the driving licence will facilitate the traffic police to take appropriate action to either suspend the licence temporarily or permanently or to take such other appropriate action. Such a procedure has to be followed in our Country as well, as a measure of curtailing the road accidents to the maximum extent. Unless this is done, the offenders will not feel the repercussions that may follow. In this context, the below mentioned paragraphs in the decision of the Honourable Supreme Court referred to above, can be usefully extracted:-*



*"96. The World Health Organisation in the Global Status Report on Road Safety has pointed out that speeding and drunk driving are the major contributing factors in road accidents. According to the National Crime Records Bureau (NCRB), the total number of deaths due to road accidents in India, every year is now over 1,35,000. NCRB report also states drunken driving as a major factor for road accidents. Our country has a dubious distinction of registering maximum number of deaths in road accidents. It is high time that lawmakers revisit the sentencing policy reflected in Section 304-A IPC."*

13. Though this Court sympathizes with the appellant for the injuries sustained by him, it will not be a ground for this Court to recognize or to give a stamp of approval for the act done by him in riding the two wheeler, while he was a minor. If the claim of the appellant is entertained, this Court is afraid that it would open the flood gate and those who have no right to drive the motor vehicle would approach this Court and would justify their act to be recognized resulting in docket explosion. Even though, Motor vehicle Act is a benevolent legislation, as contended by the counsel for the appellant, I do not think that it would *ipso facto* be applied in all the cases. Further, when there is a clear violation of policy condition, the Insurance Company cannot be burdened with

the obligation of paying compensation amount to the appellant, when under law, he is not entitled to receive it. When the appellant himself is a tort-feaser, he is not entitled to maintain the claim petition at all. Therefore, this Court is of the view that there is no legal infirmity in the order of dismissal passed by the Tribunal.

In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

**03.03.2022**

vum

Index : Yes / No  
Speaking Order / Non Speaking order

To

1. The Motor Accident Claims Tribunal,  
IV Judge, Small Causes Court, Chennai.
2. The Section Officer,  
VR Section,  
Madras High Court,  
Chennai.