IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 3134 of 2009
&
M.P. No. 1 of 2009

The Reliance General Alliance Insurance Co. Ltd.,
Heavi Tree,
Unit No.1, 3rd Floor,
No.23, Spur Tank Road,
Chetpet, Chennai - 600 031. ...Appellant/2nd Respondent

Vs.

1. A. Usman Ali
2. V. Gopi
3. G. Ramu

4. The United India Insurance Co. Ltd.,
No.13-A, Nethaji Road,
Manjakuppam, Cuddalore.

(R2 & R3 ex parte before Lower Court. Hence, notice may be dispensed with). ...Respondents/
Petitioner 1, 3 & 4

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 15.07.2009 passed in M.C.O.P. No. 124 of 2007 by the Motor Accidents Claims Tribunal (CJM), Cuddalore.

For Appellant : Mrs. Harini for
Mr.N. Vijayaraghavan

For Respondents : Mr.S. Partheeban for R1
Mr.D. Bhaskaran for R4
R2 & R3 ex parte

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant Insurance Company as against the fastening of 50% liability on them and directing them to pay 50% of Rs.1,65,000/- awarded as compensation to the 1st respondent/claimant for the injuries sustained by him in the accident, which occurred on 07.11.2006, when the mini van driven by him was hit by a mini bus belonging to the 3rd respondent and insured with the 4th respondent.

2. Heard Mrs. Harini, learned counsel for the appellant, Mr.S. Partheeban, learned counsel for the 1st respondent and Mr.D. Bhaskaran, learned counsel for the 4th respondent.

3. The Tribunal, noting that the accident occurred, because of the head on collision between the two vehicles in question, as revealed by Ex-P3, the Motor Vehicles Inspector's Report, fastened the liability on the appellant as well as the 4th respondent in the ratio 50: 50.

4. Learned counsel for the appellant would submit that as the 1st respondent himself was driving the mini van, he is a tort-feasor and as such, he cannot be a claimant and the liability fastened on the appellant has to be set aside.

5. However, Mr.D. Bhaskaran, learned counsel for the 4th respondent Insurance Company would submit that the appellant cannot maintain this appeal as a common award was passed by the Tribunal, in respect of two claim petitions, namely, M.C.O.P. Nos. 124 & 126 of 2007, the first one by the 1st respondent herein and the other by the passenger, who travelled in the mini van driven by the 1st respondent herein and the appellant Insurance Company satisfied the award passed by the Tribunal in respect of M.C.O.P. No. 126 of 2007 by depositing the award amount. Therefore, according to the learned counsel, the above appeal is liable to be dismissed.

6. Mr.S. Partheeban, learned counsel for the 1st respondent would submit that the entire liability has to be fastened on the 4th respondent Insurance Company.

7. A perusal of the records would show that the 1st respondent/claimant examined himself as P.W.1 and the eye-witness to the occurrence, (the claimant in the connected claim petition) was examined as P.W.2. There is no contra or rebuttal evidence let in, either on behalf of the appellant Insurance Company or on behalf of

the 4th respondent Insurance Company. Moreover, Ex-P1, FIR was filed as against the driver of the Mini Bus, insured with the 4th respondent Insurance Company. Merely because, the Motor Vehicles Inspector's Report stated that both the vehicles were damaged, it would not automatically lead to the conclusion that there was head on collision. Taking into consideration the evidence of P.W.1 and P.W.2 (eye-witness), who spoke categorically to the fact that it was the mini bus insured with the 4th respondent Insurance Company, which was driven in a rash and negligent manner and the filing of FIR, Ex-P1, as against the driver of the said vehicle, that too, in the absence of any rebuttal evidence, the Tribunal should not have fastened the liability in the ratio 50: 50 on the appellant as well as on the 4th respondent. Therefore, 50% liability fastened on the appellant is set aside and the entire liability is fastened on the 4th respondent, who shall pay the entire compensation to the 1st respondent/claimant.

8. In view of the aforesaid conclusion, the Civil Miscellaneous Appeal is partly allowed and the 1st respondent/claimant is entitled to receive the entire award amount from the 4th respondent Insurance Company. No costs. Connected M.P. is closed.

9. The 4th respondent Insurance Company is directed to deposit the entire award amount, with interest and costs, before the Tribunal within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st respondent/claimant is entitled to withdraw the same within a period of one week thereafter. If the appellant had already deposited their share of the award amount and the said amount had also been withdrawn by the 1st respondent/claimant, then the 4th respondent shall pay the appellant's share of the award amount directly to them.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

nv

To

1.The MACT (CJM),
Cuddalore.

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

1 CC to Mr.M.B.Gopalan, Advocate SR.No. 30200

1 CC to Mr.D. Bhaskaran, Advocate SR.No. 30220

1 CC to Mr.S. Partheeban, Advocate SR.No. 30283

TEJ (CO)
PSI (24.06.2015)