

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1893 of 2016

United India Insurance Co.Ltd.,
G.G.Complex
139, Kumaran Road
Tirupur 641 601

.. Appellant

-Vs-

1. M.Sowkath Alikhan
2. D.Nalini

... Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 26.04.2016 made in M.C.O.P.No.213 of 2008 on the file of the Motor Accident Claims Tribunal, (First Additional Subordinate Judge), Salem.

For Appellant :: Mr.C.Paranthaman

JUDGMENT

M/s United India Insurance Company Limited, Tirupur has brought this appeal challenging the correctness of the impugned award passed by the Motor Accident Claims Tribunal (First Additional Subordinate Judge), Salem in M.C.O.P.No.213 of 2008 granting a sum of Rs.1,67,000/-, as against the claim of Rs.5,00,000/-, payable to the first respondent/claimant for the grievous injuries suffered by him in the accident that occurred on 29.7.2007 at about 10.30 A.M., while going from west to east in his Bajaj Scooter bearing Registration No.TN 27 3751, when he was hit by the offending motorcycle viz., Bajaj Pulsar motorcycle bearing Registration No.TN 39 Z 8176, causing grievous injuries in his right leg and broken right ankle, for which the injured had taken treatment as an in-patient from 29.7.2007 to 7.8.2007 in a private hospital.

2. Assailing the impugned award, the learned counsel for the appellant-Insurance Company has submitted that only on the basis of the First Information Report registered in Crime No.266 of 2007 under Sections 279 & 337 of IPC, which was ultimately closed by the investigating agency stating that it was a mistake of fact, the Tribunal has given a wrong finding that there was

negligence and therefore the liability has to be fastened on the insurance company.

3. The contention of the learned counsel for the appellant is liable to be brushed aside at the outset. The reason is that the Tribunal, while examining the issue as to whether the accident occurred due to the rash and negligent driving of the second respondent's rider, had considered two aspects. After the accident was caused by the rider of the Bajaj Pulsar motorcycle bearing Registration No.TN 39 Z 8176 belonging to the second respondent, First Information Report came to be registered in Crime No.266 of 2007 by the Traffic Wing, Salem and first-aid was given to the injured claimant in Nalini Sridhar Hospital. Thereafter, he took treatment as an in-patient in Girubha Hospital for nine days and a surgery was also performed in his right ankle. To accept this version, the Tribunal had gone through the discharge summary, wound certificate, medical bills and photographs marked as Exs.P2 to P8. With regard to the First Information Report marked as Ex.P1, the Tribunal has already considered the very same argument advanced by the learned counsel for the appellant that one Mr.Arputham, Special Sub Inspector of Police, Traffic Wing, while being examined as R.W.1, had closed the case as mistake of fact. But the Tribunal has given a specific and categorical finding that though the final report filed by R.W.1 was marked as Ex.R1, on an evaluation of the evidence on record, it has reached a conclusion that R.W.1-Arputham was not the investigating agency in Crime No.266 of 2007. However, based on the documentary evidence, namely, case diary, R.W.1 wrongly deposed evidence and indeed Crime No.266 of 2007 was investigated by Mr.Sureshkumar, Sub Inspector of Police, who was not examined before the Tribunal.

4. Secondly, the Tribunal has also pinpointed that 'RCS' notice was not even served on the de facto complainant. Therefore, the Tribunal, taking strength from the reported decision of this Court in 2013 (1) TN MAC 530 holding that when there was no evidence to show the serving of 'RCS' notice to the complainant and filing of the original in Court, much credence should not be given to final report, has rightly come to the conclusion that no credence can be given to the final report laid by the investigating officer. The reason is that instead of examining Mr.Sureshkumar, Sub Inspector of Police, who was the investigating officer in Crime No.266 of 2007, some other officer viz., Mr.Aruputham, Special Sub Inspector of Police, Traffic Wing was wrongly examined as R.W.1 and on that basis, the closure of the criminal case as mistake of fact cannot be taken into account. This Court, fully agreeing with the findings recorded by the Tribunal, does not find merits in the contention made by the learned counsel for the appellant insurance company. In any event, when the finding of fact with regard to the

negligence and rash driving has been clearly held by the Tribunal against the rider of the offending Bajaj Pulsar Motorcycle bearing Registration No.TN 39 Z 8176 owned by the second respondent and the appellant being the insurer of the said vehicle, the vicarious liability has to be borne by the appellant insurance company. Therefore, this Court is not able to find any infirmity in the award of the Tribunal either on the finding of negligence or on the finding of liability. Accordingly, the civil miscellaneous appeal is dismissed confirming the award of the Tribunal. The appellant is directed to deposit the entire award amount together with interest thereon to the credit of the M.C.O.P.No.213 of 2008 on the file of the Motor Accident Claims Tribunal (First Additional Subordinate Judge), Salem within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the first respondent/claimant is at liberty to withdraw the entire sum along with accrued interest by moving a proper application before the Tribunal. Consequently, C.M.P.No.13880 of 2016 is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The First Additional Subordinate Judge
Motor Accidents Claims Tribunal
Salem

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C.M.A.No.1893 of 2016

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