

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.396 of 2015

Parasuraman

... Appellant/Petitioner

Vs

1.Mariappan

2.M/s.Iffco Tokio General Insurance
Company Limited

by its Manager, Chennai-17

... Respondents

Prayer:- This Civil Miscellaneous Appeal is filed against the common judgement and decree, dated 19.12.2012, made in MCOP.No.7 of 2010 by the learned Subordinate Judge (MACT), Harur.

For Appellant : Mr.J.Chandran for
Mr.R.Ranganatha Naidu

For Respondents : Mrs.C.Harini for
Mr.N.Vijayaraghavan-R2
R1 - Given Up

ORDER

The claimant, in MCOP.No.7 of 2010 on the file of the learned Subordinate Judge (MACT), Harur, has filed this civil miscellaneous appeal, against the judgement and decree, dated 19.12.2012, dismissing the said claim petition made for damages caused to his Skoda Car met with the accident.

2. On 31.8.2009 at 10.20 hours, when the claimant was driving his Skoda Car, bearing Reg.No.TN-02-AJ-2901, from Chennai to Bangalore NH Road, at Giddampataty junction, the tractor bearing Reg.No.TN-24-U-2432 belonging to the 1st Respondent, which was insured with the 2nd Respondent, namely, IFFCO Tokio General Insurance Company Limited, Chennai, coming from Krishnagiri, dashed against the said Skoda Car, due to which, the Skoda Car was completely damaged. It is the case of the claimant that the Motor Vehicle Inspector also submitted a report after conducting a survey and the damages caused to the Car and the expenses for repairing the Car was assessed at Rs.5,22,278/-.

3. Admittedly, in the present case, the Skoda Car of the claimant, which was insured with the ICICI Lombard General Insurance, was having a limited claim up to Rs.3,37,925/-, which was also granted to him, but the balance amount of Rs.1,83,953/- alone was not paid although it is liable to be paid by the 2nd Respondent Insurance Company. It is also the further claim of the claimant that for the multiple injuries sustained by him in the accident, for which the Doctor had also issued the disability certificate, certifying the disability at 30%, in another claim petition in MCOP.No.6 of 2010 filed by him before the Tribunal, only a meagre sum of Rs.96,000/- as compensation was awarded by the Tribunal, by the common judgement and decree dated 19.12.2012. As against the same, the claimant has filed CMA.No.395 of 2015, which was disposed of by this court, by the judgement and decree dated 29.9.2015, enhancing the compensation from Rs.96,000/- to Rs.2,19,000/- with interest at 7.5% p.a. from the date of the petition till the date of deposit. However, as this case was not taken up for passing final orders, it has been pleaded before this court that when the total expenses for repairing the damages caused to the said Skoda Car has already been assessed at Rs.5,22,278/-, out of which, the Skoda Car of the claimant, which was insured with the ICICI Lombard General Insurance, was having a limited claim up to Rs.3,37,925/-, which was also granted to him, the balance amount of Rs.1,83,953/- alone is liable to be paid by the 2nd Respondent Insurance Company.

4. Now, the question is as to whether the 2nd Respondent Insurance Company can be saddled with the liability to pay a sum of Rs.1,83,953/- towards the damages caused to the Skoda Car of the claimant in the accident.

5. The question of negligence was adjudicated upon by the Tribunal in detail. An argument was advanced on behalf of the 2nd Respondent Insurance Company that the claimant, while driving the Skoda Car, was under the influence of alcohol, as a result of which only, the accident had occurred and therefore, the claimant alone has to be held as liable for inviting the trouble. The Tribunal, after analysing the evidence adduced on either side, came to the conclusion that there was no such evidence through cross examination of PW.2 produced to show that the claimant, while driving, was under intoxication at the time of the accident. Only a suggestion was placed before the Tribunal that only in Ex.P4 discharge summary issued by MR Hospital, it has been shown that the claimant was known for alcoholic, but that is not sufficient to show that the claimant was under the influence of alcohol while driving the vehicle at the time of the accident.

6. Further, except Ex.P1 First Information Report

registered against the driver of the Tractor, there is no

contra evidence. Again accepting the evidence of PW.1, who was an eye witness to the occurrence, the Tribunal came to the conclusion that when PW.1 himself had stated that only when the Tractor had suddenly crossed the road, the accident had occurred. Thus, a definite conclusion has been arrived at by the Tribunal that the accident had occurred only due to the rash and negligent driving by the driver of the offending Tractor and accordingly, answered the said issue in favour of the claimant. Therefore, when there was a finding arrived at by the Tribunal with regard to the negligence caused by the driver of the offending Tractor and as the Tractor has been insured with the 2nd Respondent Insurance Company at the time of the accident, the Tribunal has rightly fastened the liability on the 2nd Respondent Insurance Company, rightly invoking the theory of pay and recover policy. Therefore, this court finds no impediment to direct the 2nd Respondent Insurance Company herein to pay the said sum and accordingly, the 2nd Respondent Insurance Company is directed to pay the sum of Rs.1,84,951/- with interest at 7.5% p.a. towards damages caused to the Skoda Car of the claimant, from the date of the accident till the date of realization to the claimant within a period of two weeks from the date of receipt of a copy of this order and thereafter, to recover the same from the owner of the offending Tractor, the 1st Respondent herein in a manner known to law.

7. With the above directions, this civil miscellaneous appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Srcm

To:

1.The Subordinate Judge (MACT),
Harur.

2.The Record Keeper,
VR Section,
High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.54019

+1cc to Mr.R.Ranganatha Naidu, Advocate, S.R.No.53687

C.M.A.No.396 of 2015

MSM(CO)

CA(10/11/2016)

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