

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.992 of 2014

and

M.P.No.1 of 2014

The Divisional Manager,
The Oriental Insurance Co.,Ltd.,
Kumbakonam, Having Office at 1st Floor,
Gopal Rao Library Building, Town Hall Road,
Kumbakonam Town & District 612 001. ... Appellant

.Vs.

1.Rajesh
2.Janakiraman ... Respondents

This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree dated 16.07.2013 and made in M.C.O.P.No.103 of 2012 on the file of the Motor Accident Claims Tribunal (District Court) Karaikal.

For petitioner : Miss harini for
Mr.K.Vijayaraghavan

For R1 : Mr.S.Sounthar
R2 No Appearance

O R D E R

Questioning the negligence, the appellant/Insurance company has filed this appeal under section 173 of the Motor Vehicles Act, 1988.

2. It is manifested from the records that the first respondent /claimant had moved the claims Tribunal, with a claim petition in M.C.O.P.No.103 of 2012, claiming a sum of Rs.4,00,000/- towards the compensation for the injuries

sustained by him in a road traffic accident said to have been taken place on 25.10.2011 at 3.30 p.m. near Murugan Theatre at Thirunallar Main Road involving two motorcycles bearing Reg.Nos.PY.02.L.2169 and PY.02L.2694. In the said accident, he had sustained grievous injuries which had left permanent disablement restricting his earning capacity to the extent of 40%.

3. Mr. N.Vijayaraghavan, learned counsel for the appellant has argued that totally three vehicles were involved in the accident. The second respondent herein, was riding his motorcycle bearing Reg.No.PY.02.L.2694 from the opposite direction, when the claimant who is the first respondent herein had ridden his motor cycle bearing Reg.No.PY-02-L-2169 from east to west direction at Thirunallar Main Road. When he was proceeding near Murugan Theatre an Omni Van was proceeding in front of his motorcycle. In order to avoid a hit against the rear side of the van, he had swerved his motorcycle on his right side. While so the second respondent's motorcycle had rammed against the motorcycle belonging to the first respondent. Due to this impact, the first respondent had sustained injuries.

4. According to the learned counsel for the appellant, the entire negligence was fastened on the first respondent/claimant alone and that the claims Tribunal had lost sight upon this fact.

5. It is pertinent to note that Ex.P.1-F.I.R. appears to have been lodged by the second respondent. However, he remained exparte as he had not chosen to contest the claim petition. Even the appellant-Insurance Company had also failed to summon him and examine as a witness their side. It may be relevant to note here that the claimant had examined himself as P.W.1 on oath and according to his evidence, the second respondent alone was the tort-feasor and hence, the Tribunal had rightly fixed the negligence on him. It is significant to note here that the second respondent was not only the rider of his motorcycle, but he was also the owner of the two wheeler.

6.This Court has considered the submission made by the learned counsel for the first respondent/claimant. It is admitted fact that the appellant-insurance company had failed to examine the owner of the vehicle as one of the witnesses to disprove the claim of the claimant.

7. Hence this Court, also based on the material evidences available on record, feels that the findings of the Tribunal with reference to the negligence does not require the interference of this Court. As far as this quantum is concerned, there is no dispute and the Tribunal had passed an award of Rs.40,000/-after fixing the disability at 40%,- i.e. Rs.1,000/- per percentage.

8. It is brought to the notice of this court that the entire award amount had already been deposited along with interest and cost. Therefore, this court finds that the appeal itself is devoid of any merit and hence deserves to be dismissed.

9. In the result, this Civil Miscellaneous Appeal is dismissed. The award of the Tribunal is confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kkd

To

1 The Motor Accident Claims Tribunal
(District Court) Karaikkal.

Copy to:

2 The Section Officer,
VR Section High Court, Madras

+1 CC to Mr. Sounthar, Advocate Sr.No.36977

+1 CC to Mr. M.B. Gopalan, Advocate Sr.No.36841

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MD : 18/10/2016