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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 19.12.2016

Judgment Pronounced on : 24.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.10 of 2012
and MP.No.1 of 2012

The Divisional Manager,
M/s.New India Assurance Co. Ltd.,
Door No.1, Bharathy Road,
Cuddalore - 607 001.

... Appellant

Vs.

1.Kaliyaperumal
2.S.Ramesh

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in MCOP.No.1022 of 2005 on 25.01.2010 on the file of the learned Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Cuddalore District.

For Appellant : Mr.J.Chandran
For Respondents : Mr.R.Sridhar [for R1]

JUDGMENT

The second respondent in MCOP.No.1022 of 2005 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Cuddalore, has come forward with this appeal disputing the involvement of a motorcycle that it had insured in the accident alleged.

2. In a road accident that took place on 16.04.2005 involving the motor cycle the claimant was injured for which he has moved the MACT seeking compensation of Rs.2,00,000/-, on considering the evidence before it, the Tribunal awarded Rs.1,30,000/- payable with interest @ 7.5% per annum, payable jointly and severally both by the owner of the vehicle as well as its insurer. The break-up is as below :

Heads	Amount Awarded (Rs.)
Permanent Disability @ 25%	50,000/-
Medical Expenses	15,000/-
Pain & suffering and Mental shock & agony	25,000/-
Nourishment	20,000/-



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Heads	Amount Awarded (Rs.)
Transportation	10,000/-
Loss of income for 5 months	10,000/-
Total :	1,30,000/-

3. Before the Tribunal, the owner of the vehicle remained exparte and the insurance Company took up a plea suspecting the involvement of the vehicle said to have caused injury to the claimant. This the Tribunal disbelieved. Hence, the appeal by the insurance company. The learned counsel for the appellant made the following submissions:

a. On negligence :

(i) As per Ext.P-1-FIR, it was a motor cycle bearing registration No.TN31-J-2784 that was involved in the accident. This also gets reflected in the charge sheet subsequently filed. However, in the Ext.P-2 MVI report, the vehicle number is mentioned as TN31-F-2784.

(ii) Motorcycle bearing No.TN31-J-2784 was not insured with the appellant insurance company, nor was it inspected by the M.V. Inspector.

(iii) Whereas, the motor cycle bearing Registration No.TN31-F-2784 was insured with the appellant company, its owner was not impleaded.

b. On quantum :

As regards the quantum awarded, the nature of injury too is suspect. They were all simple in nature whereas P.W.2, who was said to have examined the claimant after about five years since the date of accident suddenly reports about a fracture of maxilla.

4. Per contra, the learned counsel for the respondent contended that the appellant neither has examined any witness nor has it produced any documents and now it tries to exploit an error regarding vehicle number in the FIR and build a case. In this regard, the owner's name and his father's name tally exactly both with the FIR as well as with the MVI report and this indicates that the motorcycle in question could only be TN 31F 2784.

6. On perusal of records, it is seen that motorcycle TN31-F-2784 insured with the appellant was inspected by the M.V.Inspector as could be gathered from Ext.P-2. He had also noted that the the vehicle was damaged in two places. It also refers to the Crime No: as 189/2005, which is same as Ext.P-1 FIR. The identical name of the accused and that of the owner of the vehicle in question apart, how to explain the discrepancy between the motorcycle No. TN31-F- 2784? It now appears



that the appellant attempts to take advantage of a minuscule variance in a single letter 'J' in the hand written FIR and is trying to make a mountain out of mole hill, ignoring other facts that would categorically establish that it was the motorcycle bearing No.TN31-F-2784 and no other was involved in the accident. It would be appreciable if a nationalised insurance company that the appellant is, can demonstrate little more responsibility in matters such as these and avoid unnecessary litigation.

7. Turning to quantum, the objection here revolves around an allegation that the nature of injury suffered was not grievous but was only simple. Here again the appellant is caught on the wrong foot. It has not even confronted this fact during the cross-examination of the claimant.

8. To conclude, I find nothing worth the material to interfere with the award of the Tribunal and consequently the appeal is dismissed but without costs. The appellant/Insurance Company and the owner of the vehicle are directed to deposit the amount awarded by the Tribunal along with accrued interest, less if any already deposited within four weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ds

To:

1.The Motor Accident Claims Tribunal,
(Principal Subordinate Court),
Cuddalore.

2.The Section Officer
VR Section,
High Court, Madras.

+1cc to Mr.J. Chandran, Advocate, S.R.No.12007
+1cc to Mr.M. Shakkirabanu, Advocate, S.R.No.12195

CMA.No.10 of 2012

VSN(CO)

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