



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.1069 of 2015 and
M.P.(MD)No.2 of 2015

The Branch Manager,
Oriental Insurance Company Ltd.,
Thanjavur.

... Appellant/Respondent No.2

Vs.

1.Karuppaian

... Respondent No.1/Petitioner

2.Pandian

... Respondent No.2/Respondent No.1

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.p.No.133 of 2011, dated 06.09.2014 on the file of the Motor Accident claims Tribunal cum Chief Judicial Magistrate, Pudukottai.

For Appellant : Mr.C.Jawahar Ravindran
For R-1 : Mr.N.Balakrishnan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance company against the award, dated 06.09.2014 made in M.C.O.P.No.133/2011 by the Motor Accident claims Tribunal cum Chief Judicial Magistrate, Pudukottai.

2.It is the case of the injured/claimant before the Tribunal that when the claimant was travelling as a pillion rider in a two wheeler bearing registration No.TN 49 AC 0325 on the Killukkottai to Valambakudi main road, near Durkaiamman koil, a two wheeler bearing registration No.TN 49 AC 3731 came in a rash and negligent manner and dashed against the right side of the claimant's two wheeler and caused injuries. Hence, the injured claimant filed an application in M.C.O.P.No.133 of 2011, on the file of the Motor Accident claims Tribunal cum Chief Judicial Magistrate, Pudukottai.

3.Before the Tribunal, the first respondent/claimant examined three witnesses as P.Ws.1 to 3 and marked eight documents as Ex.P.1 to Ex.P.8. The appellant/Insurance Company did not let in oral or documentary evidence.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred due to the rash and negligent driving of the driver of the



offending vehicle and directed the Insurance Company to pay a sum of Rs.95,000/- as compensation.

5. Against which, the appellant/Insurance Company has filed this present appeal challenging the liability.

6. The learned counsel for the appellant/Insurance Company submitted that as per Ex.P3-Accident register filed by the claimant, wherein it has been stated that the claimant had fallen from the tree and sustained injuries and therefore, the liability fixed on the appellant/Insurance Company is to be set aside.

7. Per contra, the learned counsel for the first respondent/claimant submitted that they were also not aware of the fact that in Ex.P3-Accident register, it was mentioned that the first respondent/claimant was fallen from the tree and it was only a mistake and that this plea was not raised before the Tribunal and therefore, this appeal is also to be dismissed confirming the award of the Tribunal.

8. Considering the above submissions made by both sides, this Court is of the view that to establish that the claimant had fallen from the tree, the appellant/Insurance Company had never summoned the doctor or let in any evidence and that this ground was not raised by the appellant/Insurance Company before the lower Court.

9. In view of the above, this Civil Miscellaneous Appeal is dismissed and the award dated 06.09.2014 made in M.C.O.P.No.133/2011 by the learned Chief Judicial Magistrate, Motor Accident claims Tribunal, Pudukottai, is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with proportionate interests and costs, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit being made, the first respondent/claimant is permitted to withdraw the entire award amount with accrued interests and costs. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Motor Accident claims Tribunal, Pudukottai.

+ 1 CC TO Mr.C.JAWAHAR RAVINDRAN, ADVOCATE IN SR No. 77777

RJ2

TE/JC/SAR-I : 06/10/2017 : 2P/3C

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