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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.09.2018

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No.1619 of 2008

The New India Assurance Co.Ltd.,
Kumaran Road,
Tiruppur

... Appellant

-vs-

1.David,
2. S.Kumarasamy
3. R.Sampath
4. C. Kasilingam
5. National Insurance Co. Ltd.,
638, Cuddalore Main Road,
Athur - 636 102.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accidents Claims Tribunal and Fast Track Court No.4, Coimbatore at Thiruppur in M.A.C.T.O.P.No.405 of 1997 dated 7.12.2006.

For Appellant : S.Ramalingam

For respondents: Mr.P.P.Shanmuga Sundaram for R1
for R2-served, no appearance
R3 & R4 - Not ready in notice
R5- No appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 7.12.2006 passed by the Motor Accident Claims Tribunal (Fast Track Court IV), Coimbatore at Thiruppur in M.A.C.T.O.P.No.405 of 1997.

2. The brief facts leading to the filing of the instant appeal are as follows;

(i) The 1st respondent sustained injuries on 17.3.1997, as a result of an accident caused on account of collision of a van bearing Registration No.TAP-6211 with a lorry bearing



Registration No. PY-01-C-9379. The van was insured with the appellant insurance company and the lorry was insured with the 5th respondent insurance company. The 2nd respondent is the owner of the Van and 4th respondent is the owner of the lorry.

(ii) The 1st respondent preferred a claim before the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.405 of 1997 seeking a compensation of Rs.3,00,000/-.

(iii) The Motor Accident Claims Tribunal, by its Award dated 7.12.2006 in M.C.O.P.No.405 of 1997 directed the appellant to pay the 1st respondent, a sum of Rs.1,63,800/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and also permitted the appellant to recover the said amount from the 2nd respondent, who is the owner of the insured vehicle.

3. Aggrieved by the Award dated 7.12.2006 passed in M.A.C.T.O.P.No.405 of 1999, the instant appeal has been filed by the Insurance Company.

4 Heard Mr. S. Ramalingam, learned counsel for the appellant and Mr.P.P.Shanmuga Sundaram, learned counsel appearing for 1st respondent.

5. According to the learned counsel for the appellant, the tribunal ought to have held that both the driver of the van which was insured with the appellant as well as the lorry were at fault and ought to have apportioned the liability between the owner of the van as well as the lorry. According to the appellant, only due to the fault by both the vehicles, the accident had happened which resulted in the injuries sustained by the 1st respondent.

6. Per contra, learned counsel for the 1st respondent would submit that there is a clear finding given by the tribunal that only due to the rash and negligent driving by the driver of the van insured with the appellant, the accident had happened. Therefore, according to him, only the appellant is liable to compensate the claim of the 1st respondent.

7. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels observes the following;

(a) It is an undisputed fact that the 1st respondent sustained injuries as a result of an accident caused due to the collision between the van insured with the appellant and a lorry



owned by the 4th respondent in this appeal. Based on the evidence, both oral and documentary, the tribunal has given a clear finding that only due to the rash and negligent driving by the driver of the van insured with the appellant, the accident had happened, due to which, the 1st respondent sustained injuries.

(b) No sufficient evidence has been placed by the appellant before the tribunal to establish that there was contributory negligence on the part of the driver of the lorry also.

(c) In the instant appeal, the appellant has not questioned the quantum of compensation, but has only questioned their liability for payment of the entire award amount. The tribunal has adequately protected the interest of the appellant by granting them pay and recovery rights.

8. In the light of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the appeal is dismissed. No costs. Consequently, connected M.P.No.1 of 2008 is closed.

9. The appellant is directed to deposit the Award amount, less the amount, if any, already deposited, to the credit of MCOP within a period of four weeks from the date of receipt of a copy of this order and on such deposit, being made, the 1st respondent is permitted to withdraw the same on filing an appropriate application.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msr

To

1.The Motor Accidents Claims Tribunal
and Fast Track Court No.4,
Coimbatore at Thiruppur.



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

+1cc to M/S.S.Ramalingam, Advocate Sr.65377
+1cc to M/S.P.P.Shanmugasundaram, Advocate Sr.65369
+1cc to M/S.S.Arunkumar, Advocate Sr.65631

C.M.A. No.1619 of 2008

srg 31/10/2018