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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.64 of 2010

Dharuman

...Appellant/Claimant

Vs

1.K.Selvam

2.The Branch Manager,
Oriental Insurance Company Ltd.,
Branch Office,
3-L, Siddhveerappa Chetty Street,
Dharmapuri - 636 701.

...Respondents/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 31.08.2009 passed in M.C.O.P.No. 413 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Krishnagiri.

For Appellant : Mr.P.Mani
For Respondents : Mr.D.Baskaran for R2

: R1- served - no appearance

JUDGMENT

The instant appeal has been filed by the claimant challenging the dismissal of his claim under the impugned Award dated 31.08.2009, passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Krishnagiri in M.C.O.P.No.413 of 2007.

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

(i)The Appellant sustained injuries on 02.12.2006 as a result of an accident while he was travelling in a Bajaj CD 100 Motor cycle bearing Registration No.TN 24-A 7295 owned by the first respondent and insured with the second respondent. According to the learned Counsel for the Appellant, he was a pillion rider in the Bajaj CD 100 Motor cycle bearing Registration No.TN 24-A 7295 at the time of the accident. But, according to the second respondent Insurance Company, the Appellant was the rider of the Bajaj CD 100 Motor cycle and



therefore, the second respondent is not liable to pay any compensation to the Appellant since it is not a third party claim.

(ii) The Motor Accident Claims Tribunal by its Award dated 31.08.2009 in M.C.O.P.No. 413 of 2007, dismissed the claim of the Appellant as against the second respondent, but awarded a compensation of Rs.79,500/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation as against the first respondent, who is the owner of the vehicle.

3. Aggrieved by the findings of the Tribunal, exonerated liability of the second respondent, instant appeal has been filed by the claimant.

4. Heard, Mr.P.Mani, learned Counsel for the Appellant and Mr.D.Bhaskaran, learned Counsel for the second respondent. The first respondent has remained ex parte both before the Tribunal as well as before this Court.

5. According to the learned Counsel for the Appellant, the Tribunal under the impugned Award has given an erroneous finding as if the Appellant was the rider of the Motor cycle and not a pillion rider at the time of the accident, according to him, the FIR clearly indicates that the Appellant was only a pillion rider and not the rider of the Bajaj CD 100 Motor cycle. According to him, the Bajaj CD 100 Motor cycle was driven by one Govindan, who was having a valid driving license at the time of the accident, which was marked as Ex.P-6. Therefore, according to him, being a third party claim, the Tribunal ought to have fastened the liability of the second respondent Insurance Company also.

6. Per contra, the learned Counsel for the second respondent Insurance Company would submit that the Tribunal has given a clear finding based on Ex.P-2 (wound certificate) furnished by the Appellant before the Tribunal that the Appellant was the rider of the Motor cycle and was not travelling as a pillion rider at the time of the accident. Further, he would submit that the alleged driver of the Motor cycle Govindan was also not examined by the Appellant before the Tribunal or was he made a party to the claim petition. He drew the attention of this Court to the wound certificate Ex.P-2 wherein, he stated that the Appellant was the rider of the Motor cycle at the time of the accident.

7. The learned Counsel for the second respondent also drew the attention of this Court to the findings of the Tribunal which has considered the oral and documentary evidence placed on record by both the parties and come to the conclusion that the



Appellant was in fact the rider of the Motor cycle and was not a pillion rider at the time of the accident. Therefore, according to him, the Tribunal has rightly exonerated the liability of the second respondent under the impugned Award.

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8. This Court, after having considering the materials available on record and after examining the impugned Award and after hearing the submissions of the respective Counsels observes the following:

(a) The Wound Certificate Ex.P-2 was filed only by the Appellant before the Tribunal. As seen from the Wound Certificate Ex.P.2, the Appellant was the rider of the Motor cycle at the time of the accident.

(b) The FIR was registered by the Police based on the complaint given by the Appellant. The FIR reveals that the Appellant was the pillion rider and the rider of the Motor cycle was a person by name Govindan. Before the Tribunal, the claim petition was filed only against the owner (insured) and the insurer of the Motor cycle. The alleged driver Govindan was not made as a party by the Appellant in the claim petition filed in M.C.O.P.No. 413 of 2007. The alleged driver of the vehicle Govindan was also not examined as a witness by the Appellant before the Tribunal to prove that Govindan was infact the driver of the Motor cycle and the Appellant was a pillion rider at the time of the accident.

(c) Even though, in the counter statement filed by the second respondent before the Tribunal, the second respondent has accepted the version of Appellant that the Appellant was the pillion rider at the time of accident, the counter statement was filed in the year 2007 much prior to the investigation by the second respondent. In Motor Accident cases, strict rules of pleadings need not to be followed. Ultimately, the truth will have to be ascertained through the evidence available on record. In the instant case, the evidence available on record lead to the conclusion that the Appellant was in fact the rider of the Motor cycle and not the pillion rider at the time of the accident. Since the claim made by the Appellant is not a third party claim, the Tribunal under the impugned Award has rightly exonerated the liability of the second respondent Insurance Company.

9. In the light of the above observations, in the considered view this Court there is no merit in the instant appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. The first respondent is directed to deposit the amount awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of claim till the date of realization, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.413 of 2007, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Krishnagiri, within a period of four weeks from the date



of receipt of a copy of this order. On such deposit being made, the Appellant is permitted to withdraw the said sum by filing an appropriate application.

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s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

ebsi/pam
To

1. The Chief Judicial Magistrate
Motor Accident Claims Tribunal
Krishnagiri.

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

+1 CC to Mr.P.Mani, Advocate sr 73410.

+1 CC to Mr.D.Baskaran, Advocate sr 73408.

C.M.A.No.64 of 2010

KJI (CO)
SP(11/12/2018)