

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.688 of 2010
and M.P.No.1 of 2010

The National Insurance Co. Ltd.,
Represented by its Divisional Manager,
No.62, T.S.R. Big Street,
Kumbakonam Town and Munsif ... Appellant/2nd Respondent

Vs

1.Karthikeyan ...Petitioner/1st Respondent

2.G.V.Murugan ...1st Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.11.2008 and made in M.A.C.T.O.P.No.103/2006 on the file of the Motor Accident Claims Tribunal, Mannargudi (Subordinate Court).

For Appellant : Mr.S.Vadivel

For respondents: Mr.D.Lakshmipathy for R1

R2 - served - no appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 03.11.2008, passed by the Motor Accident Claims Tribunal, Mannargudi (Subordinate Court) in MACT.OP.No.103 of 2006.

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

(i)The first respondent sustained injuries on 29.11.2005 as a result of an accident caused by a Motor Cycle bearing Registration No.TN 50 Z 6138 owned by the second respondent and insured with the Appellant.

(ii)The first respondent preferred a claim before the Motor Accident Claims Tribunal in MACTOP No.103 of 2006, seeking a

compensation of Rs.5,00,000/-.

(iii)The Motor Accident Claims Tribunal by its Award dated 03.11.2008, in MACT.OP.No.103 of 2006, directed the Appellant to pay the first respondent a sum of Rs.1,05,000/- together with interest at 9% per annum from the date of claim till the date of realization.

3.Aggrrieved by the Award dated 03.11.2008, passed in MACT.OP.No.103 of 2006, the instant appeal has been filed.

4.Heard, Mr.S.Vadivel, learned Counsel for the Appellant and Mr.D.Lakshmipathy, learned Counsel for the first respondent.

5.According to the learned Counsel for the Appellant, the driver of the insured vehicle did not possess a valid driving license at the time of the accident. Further, he would contend that the injuries sustained by the first respondent only due to the head on collision between the two Motor Cycles coming in the opposite direction and the insured vehicle is one of them. Therefore, according to him, the Tribunal ought to have apportioned the negligence equally on the side of the motor cycle bearing Registration No.TNZ 1420.

6.Per contra, the learned Counsel for the first respondent would contend that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened, which resulted in injuries sustained by the first respondent. He drew the attention of this Court to the findings of the Tribunal, wherein the Tribunal has given a categorical finding that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened.

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)The Tribunal has given a clear finding that only due to rash and negligent driving by the driver of the insured vehicle, the accident had happened.

(b)The injuries sustained by the first respondent has not been disputed by the Appellant before the Tribunal.

(c)Even though, the Appellant's contention was that the driver of the insured vehicle did not possess a valid driving license, they have not examined the concerned RTO to prove that the driver of the insured vehicle did not possess a valid driving license at the time of the accident. Since, no evidence was let in by the Appellant to establish that the driver did not possess a valid driving license, the Tribunal has rightly

rejected the said contention of the Appellant under the impugned Award.

(d)The FIR was also registered only against the rider and owner of the vehicle of the Motor Cycle bearing Registration No.TN 50 Z 6138 which is insured with the Appellant. No contra evidence has been produced by the Appellant before the Tribunal. There was no contributory negligence on the part of the rider of the other Motor Cycle bearing Registration No.TNZ 1420. Therefore, in the considered view of this Court, the Tribunal has rightly made the Appellant solely liable to compensate the claim of the first respondent. In this appeal, the Appellant has not questioned the quantum of compensation awarded by the Tribunal.

8.This Court is of the considered view that the compensation of Rs.1,05,000/- awarded to the first respondent under the impugned Award is a just compensation.

9.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 shall stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed. The Appellant is directed to deposit the amount awarded by the Tribunal together with interest at 9% per annum from the date of claim till the date of realization, after deducting the amount already deposited, if any, to the credit of MACT.OP.No.103 of 2006, on the file of the Motor Accident Claims Tribunal, Mannargudi (Subordinate Court), within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the first respondent is permitted to withdraw the said sum by filing an appropriate application.

pam

Sd/-

Assistant Registrar(CS IV)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

To

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

2.The Section Officer, VR Section, Madras High Court.(2 copies)

+1cc to Mr.D.Lakshmipathy, Advocate SR.NO.67339

+1cc to Mr.S.Vadivel, Advocate SR.NO.66537

MR(CO)

sm:31.10.2018

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