

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.272 of 2011

and

MP.No.1 of 2011

Divisional Manager

The Oriental Insurance Co Ltd.,
Vellore.

...Appellant/2nd Respondent

..Vs..

1.Shanmugam

....1st Respondent/Petitioner

2.V.Dhurai

....2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment in M.C.O.P.No.550 of 2002, dated 09.08.2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Cheyyar, Thiruvannamalai District.

For Appellant : Mr.N.Vijayaraghavan

For Respondents: Mr.K.G.SenthilKumar for R1
R2 - Exparte

JUDGMENT

The appellant, Oriental Insurance Company Limited is challenging the award passed in M.C.O.P.No.550 of 2002 dated 09.08.2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Cheyyar, Thiruvannamalai District.

2. The first respondent/claimant filed a claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.10,00,000/- for the injuries sustained by

him, in a road accident that took place on 14.08.2002 before the Motor Accident Claims Tribunal, Subordinate Judge, Cheyyar, Tiruvannamalai District.

3. The learned Sub Judge, (Motor Accidents Claims Tribunal), Cheyyar, Tiruvannamalai District, after analyzing the entire evidence on record, awarded a compensation of Rs.73,000/- together with interest at the rate of 7.5% per annum to the first respondent/claimant.

4. The trial Court has also fixed the negligence on the rider of the two wheeler bearing Registration No.TN-23-V-7018 in which the first respondent/claimant was travelling as a pillion rider. Aggrieved over the award passed by the trial Court with regard to fixation of the negligence on the rider, the Insurance Company is on appeal.

5. Mr.N.Vijayaraghavan, the learned counsel appearing for the appellant contended that the trial Court has committed an error in fixing the negligence on the rider of the motor cycle when in fact, the investigator of the Insurance Company has found that the claimant alone was riding the two wheeler and was hospitalised only after three days from the date of accident. The said investigation report marked as Ex.R1. Relying on the opinion given by the investigator, the learned counsel for the appellant would submit that the trial Court is wrong in directing the Oriental Insurance Company Limited/appellant herein to pay the compensation amount to the claimant. He further contended that a complaint before the Inspector of Police, CBCID was also preferred by them, which is still pending (Ex.R2).

6. A perusal of the records shows that the accident took place in the year 2002 and the investigator of the Oriental Insurance Company had not been examined before the trial Court to prove the contents of Ex.R1. In fact, a perusal of the investigation report shows that he has not examined any person and the reason assigned by him is that the neighbours and relatives failed to give any statement as the injured was the President of Sengottan Village.

7. In the absence of acceptable evidence, the investigator's report (Ex.R1) cannot be accepted and the trial Court has rightly fixed the negligence on the rider of the two wheeler and awarded a compensation of Rs.73,000/- to the first respondent/claimant directing the owner of the two wheeler as well as the Oriental Insurance Company to pay the compensation amount jointly and severally. I do not see any reason to interfere with the findings recorded by the trial Court.

8. The first respondent/claimant did not file any cross objection questioning the quantum of compensation awarded by the trial Court and a perusal of the records also shows that the trial Court has properly assessed the compensation amount and in the facts and circumstances of the present case, the award passed by the trial Court is upheld.

9. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

dna

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Court,
(Motor Accidents Claims Tribunal),
Cheyyar, Thiruvannamalai District.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.K.G.Senthil Kumar, Advocate, S.R.No.79399
+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.79350

सत्यमेव जयते

C.M.A.No.272 of 2011
and
MP.No.1 of 2011

KJ(CO)
KAK(29/01/2019)

WEB COPY