

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3129 of 2011

Mani

... Appellant/Claimant

Vs

1. Royal

2. The Divisional Manager,
National Insurance Company Ltd.,
J.N.Street,
Pondicherry.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accident Claims Tribunal, Pondicherry in M.A.C.T.O.P.No.587 of 2008 dated 08.07.2011.

For Appellant : Mr.P.Suresh Babu
for M/S.Achari & Antony

For Respondents : R1- Disd as per order
dated 04/11/2015
Mr.Arunkumar for R2

JUDGMENT

The instant appeal has been filed by the claimant challenging the Award dated 08.07.2011 passed by the Motor Accident Claims Tribunal, Puducherry in M.A.C.T.O.P.No.587 of 2008.

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

(i) The instant appeal has been filed by the claimant challenging the Award dated 8.7.2011 passed by the Motor Accident Claims Tribunal II, Puducherry in MACTOP No.587 of 2008.

(i) The brief facts leading to the filing of the instant appeal are as follows;

(iii) The appellant sustained injuries as a result of an accident caused by a Bajaj Discover Motor Cycle bearing Registration No.PY-01-AE-7894 owned by the 1st respondent and insured with the 2nd respondent. The appellant was traveling as a pillion rider in a Hero Honda Motor Cycle bearing Registration No.PY-01-AR-7364 and due to the rash and negligent driving by the driver of the Bajaj Discover Motor Cycle bearing Registration No.No.PY-01-AE-7894, the accident had happened and the appellant was thrown out from the Hero Honda Motor vehicle, as a result of which, he sustained injuries.

(iv) The appellant preferred a claim before the Motor Accident Claims Tribunal in MACTOP.No.587 of 2008 seeking a compensation of Rs.5,00,000/-.

(v) The Motor Accident Claims Tribunal by its Award dated 8.7.2011 in MACTOP.No.587 of 2008 held that both the 1st respondent's driver and the petitioner were equally negligent which resulted in the accident and directed the 2nd respondent Insurance Company to pay 50% of the total compensation amount of Rs.1,41,000/-, i.e., Rs.70,500/- to the appellant.

3. Aggrieved by the finding rendered by the tribunal that there was contributory negligence on the part of the appellant, the instant appeal has been filed by the claimant.

4. Heard Mr.P.Suresh Babu, learned counsel for the appellant and Mr. Arun Kumar, learned counsel for the 3rd respondent.

5. According to the learned counsel for the appellant, the appellant was only a pillion rider and therefore there could not be any contributory negligence on his side. The vehicle was admittedly driven by one Venkatesh who was examined as RW1 before the tribunal.

6. This Court, after hearing the submissions of the respective counsels, is of the considered view that the appellant admittedly being a pillion rider, cannot be held to be responsible for the contributory negligence. No evidence has also been produced by the 2nd respondent before the tribunal to

establish that there was any contributory negligence on the part of the appellant as a pillion rider. Therefore, the tribunal has erroneously given a finding that there was a contributory negligence on the side of the appellant. The said finding is set aside by this Court and in view of the same, the 2nd respondent insurance company is liable to deposit the entire award amount of Rs.1,41,000/- together with interest at the rate of 7.5% per annum from the date of claim, till the date of realisation.

7. In the result,

(i) the Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) the finding rendered by the tribunal that there was a contributory negligence on the part of the appellant is hereby set aside.

(iii) 2nd respondent insurance company is directed to deposit the entire award amount of Rs.1,41,000/- together with interest at the rate of 7.5% per annum from the date of claim, till the date of realisation, after adjusting 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.

(iv) On such deposit being made, the appellant is permitted to withdraw the same by filing an appropriate application.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msr
To

1. The Motor Accident Claims Tribunal/
Additional Subordinate Judge,,
Puducherry.

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

+1cc to M/S.Achari & Antoni, Advocate Sr.65151
+1cc to Mr.S.Arunkumar, Advocate Sr.65629

C.M.A.No.3129 of 2011

kgk[co]
srg 25/10/2018