

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.806 of 2008

V.Ravichandran

... Appellant/Claimant

..Vs..

1. S. Azhagiri

2. K. Rajendran

3. Oriental Insurance Company Limited,
F-4, Visitor's Road,
Block-II,
Neyveli - 607 801

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and final order made in M.C.O.P.No.405 of 2005, dated 20.3.2006, on the file of Motor Accident Claims Tribunal cum I Additional Sub-Judge, In-Charge, Coimbatore.

For Appellant : Mr.P. Saravana Sowmiyan

For Respondents: Mr. M. Rajasekhar for R3
No appearance for R1 & R2.

J U D G M E N T

The instant appeal has been filed by the claimant challenging the judgment and decree dated 20.3.2006 passed by the Motor Accident Claims Tribunal cum I Additional Sub-Judge, In-Charge, Coimbatore in MCOP.No.405 of 2005 rejecting the claim of the appellant.

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

(i) The appellant's vehicle namely, a van bearing Registration No.KL08/B8044 insured with the 3rd respondent suffered damages on account of the collision by a lorry bearing Registration No.TN04/B0225 with the said van. The lorry which was owned by the 2nd respondent was driven by the 1st respondent. Both the lorry as well as the van are insured with the 3rd respondent.

(ii) The appellant preferred a compensation claim before the Motor Accident Claims Tribunal, Coimbatore in MCOP.No.405 of 2005 to recover the losses suffered by him on account of the damages caused to his vehicle namely the van bearing Registration No.No.KL08/B8044.

(ii) The Motor Accident Claims Tribunal, by its judgment and decree dated 20.03.2006 rejected the claim of the appellant .

3. Aggrieved by the judgment and decree dated 20.3.2006, passed in MCOP.No.405 of 2005, the instant appeal has been filed.

4. Heard Mr.P. Saravana Sowmiyan, learned counsel for the appellant and Mr. M. Rajasekhar, learned counsel for the 3rd respondent.

5. The learned counsel for the appellant submits that only due to the rash and negligent driving by the driver of the lorry, damage was caused to the van owned by the appellant. He further submitted that both the van as well as the lorry are insured with third respondent. According to him, no valid and cogent reasons were given by the Tribunal in rejecting the claim of the appellant.

6. Per contra, the learned counsel for the 3rd respondent submitted that since the claim made by the appellant is an own damage claim and no third party is involved, the tribunal has rightly rejected the claim of the appellant. He drew the attention of this Court to the judgment of the Honourable Supreme Court in the case of National Insurance Company Limited Vs. Laxmi Narain Dhut (2007 ACJ 721) and referred to paragraph 22 of the said judgment which reads as follows;

'22. Where the claim relates to own damage claims, it cannot be adjudicated by the insurance company (sic Tribunal). But it has to be decided by an other forum, i.e., forum created under Consumer Protection Act, 1986 (in short 'the CP Act'). Before the Tribunal, there were essentially three parties, i.e., the insurer, insured and the claimants. On the contrary, before the Consumer Forums there were two parties, i.e., owner of the vehicle and the insurer. The claimant does not come into the picture. Therefore, these are cases where there is no third party involved.'

7. In the instant claim petition, no third party has made a claim, but the appellant has made a claim only in respect of the damage caused to the vehicle. Even though the driver of the van was injured and its cleaner died in

the accident, they are not parties to the claim made by the appellant before the tribunal.

8. From the materials available on record as seen from the claim petition filed before the Tribunal, it is evidently clear that the claim relates to an own damage claim which cannot be adjudicated by the tribunal. The appellant in this claim has sought to recover only the damages caused to his vehicle. Therefore, the judgment relied upon by the learned counsel for the third respondent Insurance Company namely 2007 ACJ 721 referred to supra is squarely applicable to the facts of the instant case.

9. The tribunal has rightly rejected the claim of the appellant. There is no merit in the appeal. Accordingly, the appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msr
To

The Motor Accident Claims Tribunal cum
I Additional Sub-Judge, In-Charge,
Coimbatore.

+lcc to Mr.M.Rajasekhar, Advocate Sr.57314

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