

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2371 of 2018

and

C.M.P.No.18061 of 2018

United India Insurance Co. Ltd.,
Kumaran Road,
Tiruppur.

... Appellant/3rd Respondent

Vs.

1.Kannappan

2.Ranjith

3.Kalimuthu

... Respondents/Petitioner &
Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.01.2018 made in M.C.O.P.No.294 of 2011, on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate's Court, Tiruppur.

For Appellant : Mr.T.Ravichandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 04.01.2018 made in M.C.O.P.No.294 of 2011, on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate's Court, Tiruppur.

2.The appellant/Insurance Company is third respondent in M.C.O.P.No.294 of 2011, on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate's Court, Tiruppur. The first respondent filed the above claim petition claiming a sum

of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.04.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent driving by the driver of the car, who is the second respondent herein, belonging to the third respondent and directed the appellant, who is the insurer of the said car, to pay a sum of Rs.1,87,100/- as compensation to the first respondent.

4.Against the said award passed by the Tribunal dated 04.01.2018 made in M.C.O.P.No.294 of 2011, the appellant/Insurance Company has come out with the present appeal challenging the award of the Tribunal fastening the liability fixed on the appellant/Insurance Company,.

5.The learned counsel appearing for the appellant contended that the Tribunal failed to properly appreciate the documents filed by the first respondent marked as Exs.P2 and P3 and erroneously held that the accident occurred only due to the rash and negligent driving by the driver of the car belonging to the third respondent. In the Accident Register, the first respondent has stated that he himself fell down from the two wheeler and sustained injuries and the same has been mentioned in the discharge summary. F.I.R. was registered only after 56 days of the accident and there are discrepancies in the date of accident in the F.I.R., claim petition and in the proof affidavit. The accident did not occur due to the rash and negligent driving by the driver of the car belonging to the third respondent and prayed for setting aside the award passed by the Tribunal.

6.Heard the learned counsel appearing for the appellant and perused the materials available on record.

7.The contentions of the learned counsel appearing for the appellant that the first respondent himself fell down from the two wheeler and sustained injuries, there is 56 days delay in lodging the complaint and registering the F.I.R. and there are discrepancies in the date and time of the accident, are without merits. The first respondent has explained the delay for lodging the complaint. According to the first respondent, the second respondent, owner of the vehicle/third respondent promised to settle the matter and due to that, he did not lodge the complaint immediately and did not initiate criminal proceedings. The third respondent/owner of the car remained exparte before the Tribunal and did not deny the contention of the first respondent that the third respondent promised to settle the matter. The third respondent or second respondent and appellant did not let in any eye-witness to show that the accident did not

occur due to the rash and negligent driving by the second respondent/driver of the car. The discrepancy with regard to date and time of the accident is not fatal to the claim of the first respondent, as it is well settled that even without lodging the complaint to the police, a victim can claim compensation by proving the negligence by the driver of the offending vehicle. The minor discrepancies in the F.I.R., claim petition and proof affidavit will not exonerate the appellant, when policy was in force at the time of the accident. There is no error in the reasoning of the Tribunal holding that the second respondent was responsible for the accident and that the appellant as insurer is liable to pay the compensation to the first respondent.

8. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the award amount along with accrued interest and costs, less the amount deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/claimant is permitted to withdraw the award amount granted by the Tribunal along with accrued interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

krk/kj

To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Tiruppur.

2. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.T.Ravichandran, Advocate Sr.No.80770

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SR(CO)
CSL/07.02.2019