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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1053 of 2011

and

M.P.No.1 of 2011

The Divisional Manager,
The Oriental Insurance Company Ltd.,
No.1, Katpadi, Near National Theater,
Vellore. ... Appellant /2nd Respondent

.. Vs ..

1. Yogamoorthy ...1st Respondent/Claimant
2. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Rangapuram,
Vellore - 9. ...2nd Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 13.09.2010 made in M.C.O.P.No.250 of 2004 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Vellore.

For Appellant : Ms.C.Harini
for Mr.N.Vijayaraghavan

For R-1 : Mr.C.Prabakaran

For R-2 : Mr.K.J.Sivakumar

JUDGMENT

The Insurance Company has filed this civil miscellaneous appeal challenging the Judgment and decree dated 13.09.2010 passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Vellore, in M.C.O.P.No.250 of 2004.

2. Short facts, leading to the appeal, are as follows:-

On 22.12.2003 at about 11.00 a.m., the claimant/first respondent herein was riding his bike bearing Registration No.TN-23-J-1235 by following all traffic rules and regulation from Katpadi to Vellore. At that time, a bus bearing Registration No.TN-23-N-1122 was proceeding from Katpadi to Vellore i.e., on the same direction from prior to



the claimant. The claimant followed the bus with the sufficient distance on the same direction. But the driver of the bus bearing Registration No.TN-23-N-1122 drove the same in a rash and negligent manner endangering human life and without following the rules and applied sudden break and stopped the bus without any prior intimation to avoid to hit behind the bus and hence, the claimant's vehicle dashed behind the bus. As a result of which, the claimant fell down on the road and sustained fracture in his both wrist and also sustained grievous injuries all over his body. Immediately, he was taken to CMC Hospital, Vellore, for treatment. The injured/claimant has filed a claim petition claiming a sum of Rs.2,00,000/- as compensation.

3. Before the Tribunal, on the side of the injured/claimant, the injured/claimant examined himself as P.W.1 and one Dayalan was examined as P.W.2 and Doctor was examined as P.W.3 and documents Exs.P.1 to P.12 were marked. On the side of the respondents before the Tribunal, R.Ws.1 and 2 were examined and no document was marked.

4. The Tribunal, after considering both oral and documentary evidence adduced on either side, awarded a sum of Rs.25,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization with cost. As against the said award passed by the Tribunal, the Insurance Company has filed this appeal before this Court.

5. The short point that arises for consideration is whether the Tribunal is justified in awarding a sum of Rs.25,000/- for no fault liability in respect of P.W.1, who is the owner of the vehicle and was riding the two wheeler. Ex.P.12 is the copy of insurance policy for two wheeler and it is "Act only policy" extending the coverage in respect of a third party and not for a person, who is travelling in the vehicle besides and no additional policy has been paid in the owner's risk.

6. Taking into consideration the evidence of R.W.1- Karunakaran, who is the driver of the bus at the time of the accident and also taking into consideration the fact that he was acquitted by the Criminal Court, the Tribunal has come to the conclusion that the driver of the bus is not responsible for the accident and it is also specifically held that the rider of the two wheeler who followed the bus has not diligent enough and hence, it is the claim petitioner in M.C.O.P.No.250/2004 namely, Yogamoorthy is responsible for the accident and the accident has taken place due to the rash and negligent driving of the Yogamoorthy, the rider of the two wheeler who drove the two wheeler without following the safe distance and driving rules and dashed the bus from the behind which resulted in accident and accordingly, exonerated the Transport Corporation bus driver and consequently, the insurance company.



7. The appellant herein is the insurer of the two wheeler. The main contention raised by the learned counsel appearing for the appellant/insurance company is that once the rash and negligence is fixed on the part of the rider of the two wheeler namely, the claimant he being the tort-feasor cannot claim compensation under Section 166 of the Motor Vehicles Act. However, the Tribunal has awarded a sum of Rs.25,000/- under the head of 'no fault liability'.

8. On a perusal of Ex.P.12, copy of the insurance policy for two wheeler, it is an 'Act one policy'. In view of the nature of the policy being 'Act one policy' neither the rider of the two wheeler nor the pillion rider cannot be termed as third party and hence, the insurance company viz., the insurer of the two wheeler cannot fasten with liability, in view of the nature of the policy being 'Act one policy'. Furthermore, as stated supra, the policy does not contain any endorsement of payment of additional premium and therefore, the appellant/Insurance Company is not liable to pay compensation to the claimant, as per the judgment reported in 2009 ACJ 104 [General Manager, United India Insurance Co. Ltd. Vs. M.Lakshmi and others) and therefore, when the negligence is fixed upon the rider of the two wheeler, the appellant being the insurer of the two wheeler and the policy being 'Act one policy', neither the rider nor the pillion rider can claim compensation under Section 166 of the Motor Vehicles Act.

9. This Court in the case of United India Insurance Co. Ltd., Vs. K. Shanthaku and another reported in [CDJ 2014 MHC 6148] has restricted the liability to Rs.25,000/- in case of injury and the relevant paragraph of the said Judgment is extracted hereunder:

'8. But, it is pertinent to note that the claimant himself is a tortfeasor. So far as Section 163A of MV Act is concerned, if an application is filed by a third party, the Tribunal can award compensation on structure formula, without going into the aspects of wrongful act, neglect, default of the owner/driver of the vehicle or vehicles concerned or of any other person. But, awarding compensation without discussing the rash and negligence, cannot be made applicable to the case, where the claim is made by the tortfeasor, who had caused the accident. Therefore, in the considered opinion of this Court, in the instant case, the compensation awarded by the Tribunal on a finding that since the claim petition has been filed under Section 163A of the Motor Vehicles Act, the claimant is entitled for compensation



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as per structured formula, is not correct. At the maximum, the claimant is entitled for compensation under no fault liability under Section 140 of the Motor Vehicles Act. Hence, the compensation amount of Rs.45,100/- awarded by the Tribunal is hereby reduced to Rs.25,000/- under no fault liability."

10. After analyzing the oral and documentary evidence and after going through the above Judgments, this Court would rely upon the Judgments rendered by this Court in respect of the similar set of facts of this case. Though the claim petition has been filed under Section 166 of the Motor Vehicles Act, the Tribunal has chosen to award a sum of Rs.25,000/- as compensation to the claimant treating the case filed under Section 163(A) of the Motor Vehicles Act.

11. In the result, this Court is inclined to pass the following order:-

[i] This Civil Miscellaneous appeal is partly allowed and the appellant/Insurance Company is exonerated from the other liability fixed by the Tribunal, except Rs.25,000/-. Therefore, the first respondent herein/claimant is entitled to receive only a sum of Rs.25,000/- being injury case.

[ii] The appellant/Insurance Company is directed to deposit the amount awarded by the Tribunal, less the amount already deposited, if any, with interest at the rate of 7.5% per annum, within a period of 8 weeks from the date of receipt of copy of this Judgment.

[iii] On such deposit, the first respondent herein/claimant is permitted to withdraw the same, less the amount already withdrawn, if any.

[iv] No costs. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar



To

1. The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal,
Vellore.
2. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Rangapuram, Vellore - 9.
3. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to M/s.K.J.Sivakumar, Advocate Sr.11232
+1cc to M/s.C.Prabakaran, Advocate Sr.10689
+1cc to M/s.N.Vijayaraghavan, Advocate Sr.11482

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