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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2019

CORAM :

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

CMA.No.323 of 2009

and

MP.No.1 of 2009

The New India Assurance Co.Ltd.,
No.45, Moore Street, Chennai -1. ..Appellant/2nd Respondent

Versus

1.A.Mohanraj ..1st Respondent / Petitioner

2.H.Manikandan ..2nd Respondent /1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Award dated 05.10.2007 passed in M.C.O.P.No.5259 of 2004, on the file of the Motor Accidents Claims Tribunal, (V Judge, Court of Small Causes), Chennai.

For Appellant : Mr.M.Krishnamoorthy

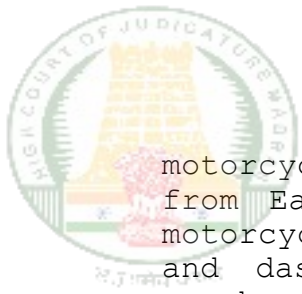
For Respondents : Mr.C.Munusamy
for M/s. C&K Law firm (for R1)

: No appearance (for R2)

J U D G M E N T

This appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the the Motor Accidents Claims Tribunal, (V Judge, Court of Small Causes), Chennai, in and by award 05.10.2007 made in M.C.O.P.No.5259 of 2004. Since the present appeal has been filed challenging findings and the quantum of compensation only, this Court is not dealing with the other aspects of the award passed by the Tribunal.

2.The claimant/first respondent herein is the injured person, who preferred the claim petition in MCOP.No.5259 of 2004 alleging that on 18.04.2004, at about 18.15 hours, the first respondent/claimant was travelling as a pillion rider in a



motorcycle bearing Reg.No.TN-20-x-4730 along the Anna Main Road from East to West and at that time, the rider of the above motorcycle drove the said vehicle in a rash and negligent manner and dashed against an auto-rickshaw, which was going ahead nearby ESI hospital, as a result of which, the first respondent/claimant sustained grievous injuries and he took treatment at Government Royapettah Hospital. Therefore, the claimant filed the above said claim petition, claiming a sum of Rs.8,35,000/- as compensation, which was restricted to Rs.7,00,000/-.

3.Before the Tribunal, the owner of the vehicle remained ex-parte. On behalf of the claimant, he examined as PW.1 besides examining one Dr.Thiagarajan was examined as PW.2 and fifteen documents were marked as Exs.P1 to P15. On the side of the respondents, one V.Shankar, Assistant Officer of the insurance company was examined as RW.1 and one document was marked as Ex.R1.

4.After going through the oral and documentary evidence, the Tribunal has held that both the owner of vehicle as well as the insurance company are jointly and severally liable and accordingly directed them to deposit the compensation of Rs.4,06,550/- to the victim/claimant.

5.Aggrrieved by the said award amount and fixing the liability on the part of the insurance company and also quantum, the Insurance company has preferred this present appeal before this Court.

6.I have heard the arguments of the counsel for the respective parties and perused the materials available on record.

7.The learned counsel appearing for the appellant/Insurance company has drew my attention to the evidence of RW.1/Shankar, Assistant from the Insurance company and also Ex.R1/copy of policy, which clearly demonstrates that the policy in this case is Act policy, which does not deal with coverage of pillion rider. Admittedly, even as per the averments made in the claim petition, the injured/first respondent herein, travelled as a pillion rider, and since nature of the policy being Act policy and driver of the two wheeler is found to be at fault, the Insurance company cannot be mulcted with liability to pay the compensation to the claimant, in view of the decision rendered by a Division Bench of this Court, in the case of New India



Assurance Co. Ltd., and others Vs. S.Krishnasamy and others reported in (2015) 1 TN MAC 19 (DB), wherein, the insurance company was exonerated from the liability and the owner of the vehicle was made liable to pay compensation to the claimant.

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8.As far as the quantum of compensation awarded by the Tribunal is concerned, taking into consideration the facts and circumstances of the case and the manner in which the accident took place, this Court is of the view that the amount awarded by the Tribunal cannot be termed to be excessive and hence, the award amount is hereby confirmed.

9.Thus, for the reasons stated above, the appellant/Insurance Company is exonerated of its liability, to pay the award amount and the owner of the vehicle, namely the second respondent is liable to pay the entire compensation to the first respondent/claimant as determined by the Tribunal.

10.Accordingly, the Civil Miscellaneous Appeal is allowed by confirming the Judgment and Decree dated 05.10.2007 passed in M.C.O.P.No.5259 of 2004, on the file of the Motor Accidents Claims Tribunal, (V Judge, Court of Small Causes), Chennai. The Insurance company is directed to withdraw the amount lying to the credit of the above said MCOP., as of today. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Judge, Motor Accidents Claims Tribunal,
(V th Court of Small Causes), Chennai.
2. The Section Officer,
VR. Section, High Court, Madras - 104.

+1 cc to M/s.M.Krishnamoorthy, Advocate, S.R.No.28690
+1 cc to M/s.C.Munusamy, Advocate, S.R.No.28704

CMA.No.323 of 2009

RSV(CO)
SSM(23/09/2019)