IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1204 of 2012
and
M.P.No.1 of 2012

The Royal Sundaram Alliance Insurance Co. Ltd.,
No.46, Whites Road, Chennai - 14. ... Appellant

.. Vs ..

1. B.Suriyanarayanan
2. T.Vinayagam
3. The Oriental Insurance Company Ltd.,
   No.8, Esplanade, Chennai. ... Respondents

[Respondents 2 and 3 are not necessary parties to the appeal and therefore, the respondents 2 and 3 are hereby given up. Hence, summons to respondents 2 and 3 is not necessary.

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 01.08.2011 made in M.C.O.P.No.137 of 2005 on the file of the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

For Appellant: Mrs.Elveera Ravindran
for Mr.S.Manohar

For R-1 : No Appearance

For RR-2 & 3 : Given up

JUDGMENT

Royal Sundaram Alliance Insurance Company, who is the third respondent before the Tribunal, has filed this civil miscellaneous appeal challenging the Judgment and decree dated 01.08.2011 passed by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai, in M.C.O.P.No.137 of 2005.

2. The first respondent herein is the claimant and he has filed the claim petition before the Tribunal alleging that on 26.07.2004 at about 5.30 p.m., while he was travelling as a pillion rider in a motorcycle TVS Fiero bearing Registration No.TN-21-E-0033 on Sengazhuneerodai Street, Kanchipuram, on the extreme left side of the road, the second respondent's motorcycle viz., Bajaj Pulsar bearing Registration No.TN-21-E-4896 was driven by its rider in a rash and negligent manner on the opposite direction and hit against the claim petitioner. As a result of which, the claimant sustained grievous injuries. The rider of the second respondent's motorcycle bearing Registration No.TN-21-E-4896 was responsible for the accident. Since the motorcycle bearing Registration No.TN-21-E-0033 was insured with the third respondent before the Tribunal/appellant herein covering personal accident, the appellant herein was impleaded so as to claim compensation under the policy. The second respondent herein as the owner, the third respondent herein as the insurer of motorcycle TN-21-E-4896 and the appellant herein as the insurer of motorcycle TN-21-E-0033 under personal accident policy are jointly and severally liable to pay compensation to the claimant. The claim petition was filed claiming a sum of Rs.5,00,000/- restricted to Rs.3,00,000/- as compensation from the respondents before the Tribunal.

3. Before the Tribunal, on the side of the injured/claimant, the injured/claimant examined himself as P.W.1 and Doctor was examined as P.W.2 and documents Exs.P.1 to P.7 were marked. On behalf of the respondents, one Mr.Vaidheeswaran, Assistant Manager of Royal Sundaram Alliance Insurance Company was examined as R.W.1 and documents Exs.R.1 to R.3 were marked.

4. The Tribunal, based upon both oral and documentary evidence adduced on either side, has fixed the liability upon the rider of both the two wheelers at the ratio of 50 : 50. Aggrieved against the non specific class as to the quantum of compensation, third respondent before the Tribunal/Royal Sundaram Alliance Insurance Company has preferred this appeal before this Court.

5. Heard the learned counsel for the appellant/insurance company.

6. On a perusal of the counter statement filed by the appellant herein/third respondent in the M.C.O.P., it is seen that a specific plea was raised by the appellant/insurance company that the injured was travelled in the two wheeler as a pillion rider and who was the owner of the two wheeler and as such, entitled for personal accident coverage premium only and hence, the claimant is entitled to get compensation of

Rs.1,00,000/- from the appellant herein under personal accident claim.

7. It is true that it has given a personal accident cover to the claimant. The appellant herein is liable only in the event of loss of life, loss of limbs or any member of the body resulting in permanent disability. [as defined under the Workman's Compensation Act].

8. My attention was drawn to Ex.R.3-copy of insurance policy with terms and conditions, wherein, the claimant was paying premium under own damage. As per the evidence of P.W.2-Doctor and Ex.P.7-Disability Certificate, I am of the considered view that the injuries sustained by the claimant/P.W.1 comes within the terms of the policy. However, the appellant/insurance company is liable to pay a sum of Rs.1,00,000/- only.

9. After going through the terms and conditions of the policy and also the admitted factual position that the second respondent herein as the owner is bound by the contract entered into between himself and the insurance company, consequently, the appellant/insurance company is liable to pay only a sum of Rs.1,00,000/-.

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the appellant/insurance company is liable to pay a sum of Rs.1,00,000/- only out of the total compensation amount of Rs.1,87,600/- with interest at 7.5% per annum. It is submitted that the appellant/insurance company had already deposited the entire award amount before the Tribunal. Out of the deposited amount, the first respondent/claimant is permitted to withdraw a sum of Rs.1,00,000/- with proportionate interest, after adjusting the amount already withdrawn, if any. The excess amount, if any, lying in the credit of M.C.O.P.No.137 of 2005 shall be withdrawn by the appellant/Insurance Company. No costs. Consequently, the connected miscellaneous petition is closed.
jrl

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The IV Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

Copy to:-
1. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.S.Manohar, Advocate, SR.No.28672

C.M.A.No.1204 of 2012

Kak(30/07/2019)