IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2749 of 2019
and
C.M.P.No.13986 of 2019

United India Insurance Co. Ltd.,
No.134, Greams Road,
Sillingi Building, 4th Floor,
Chennai - 600 006. … Appellant/2nd Respondent

Vs

1.S.Krishna ...1st Respondent/Petitioner

2.K.Kaja Mohideen ...2nd Respondent/Ist Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.07.2018 made in M.C.O.P.No.3795 of 2016 on the file of the Motor Accident Claims Tribunal, II Special Sub Court, Chennai.

For Appellant : Mr.P.Sankaranarayanan
For R1 : Mr.G.Purushothaman

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 11.07.2018 made in M.C.O.P.No.3795 of 2016 on the file of the Motor Accident Claims Tribunal, II Special Sub Court, Chennai.

2.The appellant herein is the respondent/Insurance Company aggrieved against the liability has preferred this appeal.

3.The brief facts is as follows:

On 08.05.2016 at about 13.45 hrs, while the petitioner was travelling as a pillion rider in a motorcycle bearing Reg.No.TN-22-BZ-4268 along the 200 feet, M.G.R.Nagar Road Junction, Chinna Mathur, Chennai - 600 068, from Manali to Madhavaram Roundana, the rider of the motorcycle in a very rash and negligent manner, at terrific speed, endangering to the public safety, suddenly lost his control and went to the right side of road and dashed against the left side ongoing lorry bearing Reg.No.TN-20-BT-9945, and thereby caused the grievous accident, as a result of which the petitioner and the rider were thrown out and fell down and sustained grievous injuries. Thus the petitioner claimed a sum of Rs.16,00,000/- as compensation for the injuries sustained by him in the accident.

4.The appellant/Insurance Company denied the mode of accident as alleged in the claim petition. The appellant/Insurance Company contended that the accident took place due to the rash and negligent riding by the rider of the motorcycle wherein the petitioner travelled as a pillion rider and the Insurance Company is not vicariously liable to pay any compensation since the policy is a liability policy. Further contended that the claimant has to prove the age, avocation, earning capacity and both the lorry and motorcycle had valid driving licence at the time of accident. Regarding the sum claimed by the claimant is highly exaggerated in the absence of any proof.

5.The Tribunal observed the contentions raised by both side by way of evidence and documents and has given a finding that the accident occurred only due to the rash and negligent riding on the part of the rider of the said motorcycle and awarded a sum of Rs.1,64,000/- as compensation under the following heads:

Compensation for disability	Rs.60,000/-
Pain and sufferings	Rs.20,000/-
Loss of income	Rs.13,000/-
Transport to hospital	Rs.2,000/-
Extra nourishment	Rs.19,000/-
Damage to clothing and articles	Rs.1,000/-
Attender charges	Rs.9,000/-
Loss of amenities	Rs.20,000/-
Martial Status	Rs.20,000/-

Compensation for disability	Rs.60,000/-
Total	Rs.1,64,000/-

Aggrieved against the said award and liability the appellant/Insurance Company has preferred this appeal.

6.In the grounds of appeal, the appellant has contended that the Tribunal failed to consider the Ex.P8 copy of policy of insurance reveals that is a "Liability only Policy" which does not provide cover for the pillion rider the finding of the Tribunal is erroneous. The finding of the Tribunal that the 1st respondent/claimant being a pillion rider is a third party. The Tribunal erred in fixing the liability to pay compensation on the appellant based on the finding that the claimant is a third party. The Tribunal erred in fixing the liability to pay compensation when it is a settled position of law that passengers and pillion rider's of vehicles are not covered by an "Act only Policy" of insurance. The finding of the Tribunal that the burden of proof is on the 1st respondent/claimant to establish that the 2nd respondent is liable to pay compensation. However, the award made by the Tribunal at Rs.1,64,000/- is very much on the meagre side.

7.Heard Mr.P.Sankaranarayanan, learned counsel appearing for the appellant/Insurance Company and Mr.G.Purushothaman, learned counsel appearing for the 1st respondent and perused all the materials available on record.

8.On perusal of the records, it is seen that the claimant were examined before the Tribunal regarding the mode of accident what happened on that date and also the claim made by him under various heads. Regarding the aspect of negligence the Tribunal has made three following issues:

(1) Whether the accident occurred due to rash and negligent act of the driver of the vehicle bearing Reg.No.TN-22-BZ-4268?

(2) Who is liable to pay compensation?

(3) Whether the petitioner is entitled to compensation and quantum?

The negligent aspect in this case was observed by the Tribunal based on Ex.P1/ FIR and also in the absence of any examination of witness, documents and evidence on the side of the respondent. The finding of the Tribunal is that the rider of the motorcycle is responsible for the negligent driving. The second issue who is liable to pay compensation. The Tribunal has observed the fact that the 1st respondent/owner of the said vehicle and the 2nd respondent is the insurer of the said vehicle. The xerox copy of the registered certificate of the vehicle bearing Reg.No.TN-22-BZ-4268 was marked as Ex.P7, which clearly proves the fact that the 1st respondent is the owner of the vehicle. The said vehicle also insured and the Insurance is in force from 01.03.2016 to 28.02.2017. Hence the Tribunal has given a finding that on the date of accident there is a valid Insurance is available. Hence, the Insurance Company is liable to pay compensation.

9.On the other hand the contention raised by the appellant/Insurance Company is that the Insurance Policy is Act Policy i.e. liability only policy. Therefore the 2nd respondent is not liable to pay compensation by relying upon the case law reported in "Khadeeja Vs. Rushdi 2016(2) TN MAC 678 (DB) (Ker.)" . The relevant portion is extracted hereunder:

> "Going by the general regulations under the Indian Motor Tariff framed by the Tariff Advisory Committee, in accordance with the provisions of Part II of the insurance Act, 1938, a 'Liability Only Policy' covers Third Party Liability for bodily injury and/or death and property damage."

In the decisions reported in "New India Assurance Co. Ltd., Vs. Murugan" reported in "2017 (1) TN MAC 184", the Hon'ble High Court has held in paragraph 14 as under:

> "14.A careful reading of the ratio laid down by the Hon'ble Division Bench of this Court shows that a 'Third Party' is one who is neither the Insurer nor the insured and the third party coverage must include all Third parties. In the light of the Full Bench Judgment of the Madhya Pradesh High Court, when a 'Third Party' include everyone, be it a person travelling in another vehicle, one walking on the road or a passenger of the vehicle which is the subject matter of Insurance Policy".

The discussions is only with regard to third party whereas whether the pillion rider is the third party are not discussed by the Tribunal. When it is only a act policy the pillion rider is not a third party whereas the finding of the Tribunal is not proper. The Tribunal based on the insurance coverage fixed liability on the appellant/Insurance Company.

10.In view of the fact that the policy covers only third party. On the other hand, there is no evidence and documents was filed by the 1st respondent. On perusal of the records, it is observed that Ex.P8 copy of the Insurance Policy of the 1st respondent vehicle was very much filed before the Tribunal. Hence in view of the said finding the appeal is allowed. No Costs. Consequently the connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

mtl
To

1.The Motor Accidents Claims Tribunal,
The Special Subordinate Judge-II
Chennai.

+1 cc to Mr.P.Sankaranarayanan Advocate sr63997
+1 cc to Mr.G.Purushothaman Advocate sr64127

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