

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.259 of 2012 and
M.P.No.1 of 2012 and
M.P.No.1 of 2014

The Oriental Insurance Company Ltd.,
No.238, Arcot Road,
Jambu Bala Complex, First Floor,
Vellore - 632 004. ... Appellant/4th respondent

Versus

1.Sasikumar ...1st Respondent/Petitioner

2.V. Dakshinamoorthy

3. M/s.United India Insurance Co Ltd.,
No.46-51, Katpadi Road,
Vellore 632 004.

4. K. Selvaraj 2 to 4 Respondents/1 to 3 Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and Decree dated 24.03.2011 passed in M.C.O.P.No. 696 of 2008, on the file of the Motor Accidents Claims Tribunal, Vellore. (In the Court of Chief Judicial Magistrate, Vellore).

For Appellant : Mr.Sivakumar

For Respondent 1 :Mr.E. Kannadasan

For Respondent 3 :Mr.Srinivasa Ramalingam

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award and Decree dated 24.03.2011 passed in M.C.O.P.No.696 of 2008, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

2.The brief facts which are necessary for the disposal of this appeal is that on 05.07.2004 at about 4.00 p.m, the first respondent herein/claimant, was proceeding towards Vellore to Tiruvannamalai as a pillion rider in a two wheeler bearing Registration No.TN-25-W-4746, which belongs to the fourth respondent herein and at that time, the second respondent's van bearing Registration No.TN-23-J-9052 came in the opposite direction and hit the two wheeler of the fourth respondent herein. As a result of which, the first respondent fell down and sustained injuries. The accident had occurred due to the rash and negligent driving of the driver of the van. Hence, the first respondent herein has filed a claim petition in M.C.O.P.No.696 of 2008, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Vellore, seeking compensation of Rs.15,00,000/-.

3. The injured/claimant examined himself as P.W.1 and Doctor was examined as P.W.2 and documents Exs.P.1 to P.14 were marked on the side of the injured/claimant. On behalf of the respondents before the Tribunal, one witness was examined as R.W.1 and documents Exs.R.1 to R.4 were marked.

4. The Tribunal, after considering both oral and documentary evidence adduced on either side, awarded a sum of Rs.2,70,000/- together with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit as compensation. As against the said award passed by the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Vellore, the Insurance Company has preferred this appeal before this Court.

5. Learned counsel appearing for the appellant/Insurance Company resisted the claim and would state that they are the insurer of the two wheeler and hence, the liability fixed against them by the Tribunal is not a reasonable one and prays for allowing of this appeal.

6. Per Contra, the learned counsel appearing for the third respondent/Insurance Company would contend that the appellant/Insurance Company is the insurer of the vehicle involved in the accident and hence, the appellant/insurance company is liable to pay compensation to the claimant and

therefore, prays for dismissal of this appeal.

7. Heard Both sides.

8. On a perusal of the records, it is seen that on the basis of the oral evidence of PW-1, the Tribunal has held that at the time of the accident, the claimant was aged about 31 years and he was an Ex-Service man and hence, awarded a sum of Rs.50,000/- under the head loss of income. Further, considering the Disability certificate/Ex.12 produced by the Doctor, the Tribunal has awarded a sum of Rs.50,000/- under the head of Partial Disability.

9. The Tribunal, after verifying the documents Exs.P.9,10 and 11/medical bills, awarded a sum of Rs.50,000/- towards Medical Expenses. Taking note of the relevant documents pertaining to Transportation, the Tribunal has awarded a sum of Rs.20,000/- under the head of Transportation Charges. For the five major fractures suffered by the claimant, the Tribunal has awarded a sum of Rs.1,00,000/- and in total, the Tribunal has awarded a sum of Rs.2,70,000/- as compensation.

10. After hearing both the parties and after perusing the award, it is seen that the quantum of compensation awarded by the Tribunal under various heads appears to be just and reasonable in entirety and accordingly, the quantum of compensation is hereby confirmed.

11. Learned counsel appearing for the appellant/insurance company would contend that the Tribunal has miserably failed to take note of the fact that the policy in respect of the two wheeler in which the injured had travelled was cancelled and the same was intimated and on the date of the accident there is no valid policy coverage and hence, they cannot be mulctated with liability.

12. Heard the learned counsel appearing for the first respondent/claimant on the above aspect.

13. It is seen from the records that the appellant/insurance company, who is the fourth respondent before the Tribunal has taken a specific plea in the counter statement that on the date of the accident, there is no valid policy coverage for the two wheeler and the copy of the policy which was earlier issued under Ex.R.1 appears to have been cancelled in view of the dishonour of the cheque and a communication was sent to owner of the two wheeler viz., fourth respondent herein and it was duly served upon him as could be seen from the documents Exs.R.1, R.2 and R.3. Furthermore, notice to produce

the same was also been given in Ex.R.4. Thus, this Court finds that when there is no valid insurance policy coverage on the date of the accident, the appellant/insurance company cannot be mulctated with liability to pay the compensation.

14. My attention was drawn to the evidence of P.W.1-Sasikumar. On a perusal of the evidence of P.W.1 coupled with Ex.P.1-FIR, it is seen that P.W.1 is an Ex-service man and he was travelling in the two wheeler and as per the evidence of P.W.1, due to the rash and negligent driving on the part of the driver of the offending van belongs to the second respondent herein and insured with the third respondent herein, the accident had occurred. The owner of the van remained ex-parte. On re-appreciation of the evidence on record and also taking note of the documents Exs.P.1, P.3 and P.4, this Court holds that the accident has taken place due to the rash and negligent driving on the part of the driver of the van only and hence, the contra finding rendered by the Tribunal that it is a composite negligence is liable to be stands vacated and accordingly, the proposition of contributory negligence fixed by the Tribunal at the ratio of 50:50 is also hereby stands vacated.

15. In view of the foregoing reasons, this Court is of the considered view that the accident has taken place due to the rash and negligent driving of the driver of the van, of the second respondent herein and insured with the third respondent herein.

16. In the result,

(a) This Civil Miscellaneous Appeal is allowed.

(b) The award passed by the Tribunal is hereby modified to the effect that the liability of the appellant/insurance company stands exonerated and the appellant/insurance company is not liable to pay any compensation to the claimant and if any amount is already deposited by the appellant/insurance company, they are permitted to withdraw the said amount.

(c) Respondents 2 and 3 herein are jointly and severally liable to pay the entire compensation as awarded by the Tribunal 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.

(d) On such deposit being made, the first respondent herein/claimant is permitted to withdraw the award amount, less the amount already withdrawn if any, by way of filing proper application before the Tribunal.

(e) There will be no order as to costs.

(f) Consequently, connected miscellaneous petition are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Vellore.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to M/s.Srinivasan Ramalingam Advocate sr 28078
+1 cc to M/s.E.Kannadasan Advocate sr 27564
+1 cc to M/s.R.Sivakumar Advocate sr 27311

CMA No.259 of 2012

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