



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.855 of 2015

M/s.Oriental Insurance Co. Ltd.,
Third Party Claims Cell (HUB),
Near Murugan Theatre,
Sathuvachari,
Vellore - 9.

...Appellant/2nd Respondent

Vs.

1.Thiru.Pitchandi

..1st Respondent/Petitioner

2.Thiru.K.Hajee Basha

..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.11.2014 made in M.C.O.P.No.256 of 2013 on the file of Motor Accident Claims Tribunal, Sub Court, Ranipet.

For Appellant : Mr.J.Chandran

For Respondent

R1 : Mr.C.Prabhakaran

For Respondent

R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 03.11.2014 made in M.C.O.P.No.256 of 2013 on the file of Motor Accident Claims Tribunal, Sub Court, Ranipet.

2. The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.256 of 2013 on the file of Motor Accident Claims Tribunal, Sub Court, Ranipet. The 1st respondent filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.06.2013. The Tribunal, considering the pleadings,



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oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 2nd respondent/rider-cum-owner of the motorcycle and directed both the appellant/Insurance Company being insurer of the said motorcycle as well as the 2nd respondent to pay a sum of Rs.2,01,000/- as compensation to the 1st respondent, jointly and severally. Against the said award dated 03.11.2014 made in M.C.O.P.No.256 of 2013, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant/Insurance Company contended that the accident did not occur due to the negligence on the part of the 2nd respondent/rider of the motorcycle. The accident has occurred due to the negligence of the 1st respondent, as he himself fell down and the appellant is not liable to pay compensation. In Ex.P2/accident register, it is mentioned that the rider of the motorcycle, in which the 1st respondent travelled as a pillion rider, was under the influence of alcohol. Suppressing the fact, the 1st respondent misrepresented the case and the Tribunal ought to have dismissed the claim petition. PW2/Doctor has assessed the disability of the 1st respondent at 70% excessively and the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent examined himself as PW1 and proved that the accident has occurred due to the negligent riding by the 2nd respondent. The appellant has not proved the negligence on the part of the 1st respondent. The Tribunal considering the evidence of PW2/Doctor, has awarded compensation, which is not excessive and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as learned counsel appearing for the 1st respondent and perused the materials available on record.

6.From the materials available on record, it is seen that the 1st respondent has contended that while he was walking on the road, the 2nd respondent has driven the motorcycle in a rash and negligent manner with high speed, dashed against the 1st respondent and caused the accident. Due to the accident, he suffered fracture of both bones on his left leg. He has taken treatment in Government Medical College Hospital, Vellore, as in-patient on 06.06.2013, surgery was conducted on 08.07.2013 and has taken treatment till 22.07.2013 for 47 days. The 1st respondent examined himself as PW1 and examined PW2-Doctor to prove the nature of injuries and the period of treatment taken



by him. The appellant has contended that the 1st respondent travelled as a pillion rider in the motorcycle, he himself fell down from the motorcycle and the 2nd respondent is not responsible for the accident. To prove the said contention, the appellant did not examine the rider of the motorcycle or any witness. FIR was lodged only against the rider of the motorcycle. In the absence of any rebuttal evidence of PW1, the Tribunal considering the FIR and evidence let in by the 1st respondent, held that the accident has occurred due to rash and negligent riding by the 2nd respondent.

7.As far as quantum of compensation is concerned, PW2/Doctor deposed that the 1st respondent suffered 70% disability. The Tribunal reduced the percentage of disability to 50% and awarded compensation at the rate of Rs.3,000/- per percentage. The accident is of the year 2013. The amount granted by the Tribunal towards disability is not excessive. The appellant has taken treatment in the hospital as in-patient for 47 days, suffered fracture and underwent surgery. The amounts granted by the Tribunal under different heads are not excessive warranting interference by this Court.

8.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.2,01,000/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. Both the appellant/Insurance Company as well as 2nd respondent are directed to deposit the entire amount awarded by the Tribunal along with interest and costs jointly and severally, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.256 of 2013. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

kj

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Ranipet, Vellore District.



2.The Section Officer,
VR Section,
High Court,
Madras.

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+1cc to Mr.J.Chandran, Advocate, SR.No.30910
+1cc to Mr.C.Prabakaran, Advocate, SR.No.29653

C.M.A.No.855 of 2015

Kak (30/07/2019)