

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.659 of 2018

and

C.M.P.Nos.5870 and 22374 of 2018

The Oriental Insurance Company Ltd.,
2nd Floor, No.216, Prakasam Salai,
Broadway, Chennai-600 108. .. Appellant/2nd Respondent

Vs.

1.M.RajKumar ..1st Respondent/Petitioner
2.Meenakshi. .. 2nd Respondents/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.02.2017 made in M.C.O.P.No.471 of 2014 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.R.Ganesan
For RR1 : Ms.S.Vijaya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 04.02.2017 made in M.C.O.P.No.471 of 2014 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is second respondent in M.C.O.P.No.471 of 2014 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. The first respondent filed the above said claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.12.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the second respondent and directed the appellant/Insurance Company, being the Insurer of the second respondent vehicle to pay a sum of Rs.6,49,200/- as compensation to the first respondent/claimant.

4. Against the said award dated 04.02.2017 made in M.C.O.P.No.471 of 2014, the appellant-Insurance Company has come out with the present appeal, questioning the liability fastened on them.

5. The learned counsel appearing for the appellant contended that the accident occurred at Vriddhachalam. The first respondent filed the said claim petition before the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. The said Court has no territorial Jurisdiction. The driver of the bus parked the bus in front of the marriage hall. The first respondent drove the Tata Ace in a rash and negligent manner and dashed against the bus. The first respondent alone is negligent and caused the accident. The F.I.R. was registered against the first respondent. The Tribunal without considering the same, erroneously held that the driver of the bus is responsible for the accident. In any event, the Tribunal ought to have fixed contributory negligence on the part of the first respondent/claimant.

6. Per contra, Mr.S.Vijaya, learned counsel appearing for the first respondent contended that the accident occurred only due to the negligence on the part of the driver of the bus. The first respondent examined himself as P.W.1 and examined P.W.2/eye-witness and proved that the accident occurred only due to the negligence on the part of the driver of the bus. The driver of the bus only lodged the complaint and he is an interested person. The Tribunal considering the evidence let in before it has held that the driver of the bus is responsible for the accident and prayed for the dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the first respondent and perusal the entire materials available on record.

8. The contention of the learned counsel appearing for the appellant that the Tribunal did not have Jurisdiction to entertain the claim petition, is without merits. The said objections was not taken before the Tribunal. Further, the appellant is having office at Broadway, Chennai and therefore the Tribunal at Chennai has Jurisdiction.

9. As far as negligence is concerned, it is an admitted fact that the driver of the bus parked the same in front of the marriage hall. According to the appellant, the bus was parked in the left hand side. The first respondent drove the TATA Ace in a rash and negligent manner and dashed against the bus. To substantiate their contention, the appellant has not examined driver of the bus or any other eye-witness. On the other hand,

the first respondent who is an injured eye-witness examined himself and examined P.W.2/another eye-witness. They deposed that the bus was parked in the middle of the road without parking light. There is no contra evidence let in by the appellant to the evidence of P.W.1 and P.W.2. As far as F.I.R. is concerned, the driver of the bus has given complaint. He did not come to the witness box to depose the manner in which accident has occurred and substantiate the contents in F.I.R. It is well settled that the statement made on oath has to be given more weightage, than the contents in the F.I.R. In view of the above, the findings of the Tribunal that the driver of the bus was negligent and he was responsible for the accident based on the evidence let in before it, is proper and valid. There is no perversity in award of the Tribunal warranting interference by this Court.

10. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/claimant is permitted to withdraw the award amount along with interest and cost, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

tta/krk

To

1. The III Small Causes Judge,
III Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to M/s.Vijaya & Anadh, Advocate SR.No.14201

+1cc to Mr.R.Bakyaraj, Advocate SR.No.15223

C.M.A.No.659 of 2018 and
C.M.P.Nos.5870 and 22374 of 2018

KJ(CO)
GMY(09/05/2019)



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