IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.3045 of 2019

M.Murugesan ... Appellant

Vs.

1.C.Niranjan

2.The Branch Manager,
Bajaj Allianz General Insurance Co. Ltd.,
Branch Office – K.M.A.Complex-I Floor,
12B, Ram Nagar, By-Pass Road,
Madurai – 625 010. ... Respondents
(1st respondent herein is given
up as un-necessary party)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2006 made in M.C.O.P.No.428 of 2004 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dharmapuri at Krishnagiri.

For Appellant : Ms.Zeenath Begum
for Mr.V.Rajesh

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant who is the owner of the vehicle challenging the award dated 22.09.2006 made in M.C.O.P.No.428 of 2004 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dharmapuri at Krishnagiri.

2.The appellant/owner of the vehicle is 1st respondent in M.C.O.P.No.428 of 2004 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dharmapuri at Krishnagiri. The claimant filed the said claim petition, claiming a sum of Rs.4,50,000/- as compensation for the injuries sustained by him in the accident that took place on 07.09.2003. 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 tractor belonging to the appellant and directed the 2nd respondent/Insurance Company to pay a sum of Rs.1,23,500/- as compensation to the 1st respondent at first instance and recover the same from the appellant/owner of the vehicle. Challenging the said award dated 22.09.2006 made in M.C.O.P.No.428 of 2004, granting compensation to the 1st respondent, the appellant/owner of the vehicle has come out with the present appeal.

3.In the grounds of appeal the appellant has contended that the Tribunal exceeded the jurisdiction by directing the 2nd respondent/Insurance Company to recover the award amount from the appellant herein, which is beyond scope of the Motor Accident claims petition. Further, the appellant contended that the 2nd respondent/Insurance Company never made any claim against the appellant in its counter and therefore the 2nd respondent was bound to pay the claim made against the appellant i.e. owner of the vehicle. The other grievance raised by the appellant is that, if the Tribunal had indicated during the course of arguments for passing such an order against the Insurance Company to pay the same and recover from this appellant. The appellant herein would have get an opportunity to defend the same, to prove that only insurer should pay the claim. Hence, the appellant contended that pay and recovery order passed by the Tribunal as well as not given an opportunity by way of indication during the arguments or the grievance of the appellant herein and sought for setting aside the said order.

4.Though notice was served on the 2nd respondent/Insurance Company and their name is printed in the cause list, there is no representation on behalf of them either in person or through counsel.

5.Heard Ms.Zeenath Begum for Mr.V.Rajesh, learned counsel appearing for the appellant and perused all the materials on record.

6.From the materials available on record, it is observed that the claim application in M.C.O.P.No.428 of 2004 was preferred by the claimant claiming compensation of Rs.4,50,000/-. The brief fact in the claim application is that the accident occurred on 07.09.2003, when the petitioner was proceeding in the Hero Hond motorcycle bearing Reg.No.TN-23-P-4635 along with a pillion rider by observing all the rules of the road, with sound horn, towards Tirupattur. At that time the Mahindra and Mahindra Tractor bearing Reg.No.TN-47-E-9933 belonging to the 1st respondent and insured with the 2nd respondent/Insurance Company driven by its driver in a rash and negligent manner without observing rules, hit against the said motorcycle and as resulted the petitioner/rider and the pillion rider were thrown away and both got grievous injuries. The criminal case also registered for the said accident and the petitioner claimed a sum of Rs.4,50,000/- for the injuries sustained by him in the accident. The contention of the claimant is that the 1st respondent who is the owner of the tractor has to pay the compensation and the 2nd respondent the insurer of the said vehicle is bound to indemnify by the 1st respondent as per terms of insurance. The appellant herein was set exparte before the Tribunal. The 2nd respondent/Insurance Company denied the mode of accident as well as the claim made by the claimants under various heads is excessive.

7.The Tribunal after analyzing the evidence and documents placed before the same, especially the documents Ex.P1/FIR and Ex.P7/copy of the policy and also the evidence placed before the Tribunal by both side and also made a discussion while fixing the negligence. The Tribunal has given a finding that the FIR was registered against the driver of the Tractor and Ex.P7 is a policy taken for the said vehicle have insured with the 2nd respondent. The Tribunal has also observed the fact that at the time of accident, three persons travelled in the said two wheeler and the same was also admitted by the claimant in the cross examination. The Tribunal has observed the fact that the claimant rode the said vehicle along with two persons without valid driving license at the time of accident, which is clear a violation of policy condition. The Tribunal has given a finding that the petitioner is entitled only for 50% compensation because of the violation of policy condition. The driver of the Tractor also made liable to pay compensation at 50% by making elaborate discussion. Hence, the liability has been fixed as such on the claimant at 50% and on the driver of the tractor at 50%. In view of the above said observation, the Tribunal has given a finding that the 2nd respondent/Insurance Company has to pay the compensation to the claimants and recover the same from the owner of the vehicle/appellant herein. Aggrieved against the said finding the appellant herein is the owner of the vehicle has preferred this appeal.

8.On perusal of records, it is clear violation of policy condition that the claimant/injured driven the vehicle without valid driving license and the vehicle also not insured. Hence the liability fixed on the claimant at 50% and driver of the tractor at 50%. The direction of the Tribunal is very much reasonable which is based on the evidence and documents. Hence there is no error warranting interference by this Court.

9.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.1,23,500/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. No costs.

10.The appellant is directed to deposit 50% of the modified award amount (i.e.Rs.61,750/-) 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 1st respondent/claimant is permitted to withdraw the modified award amount along with interest and costs, after adjusting the amount if any, already withdrawn.

14.08.2019

Index: Yes/No
Internet : Yes
Speaking order/non speaking order

mtl

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Dharmapuri,
Krishnagiri District.

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

S.RAMATHILAGAM,J.

mtl

C.M.A.No.3045 of 2019

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