BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.1225 of 2017
and
C.M.P.(MD).No.12002 of 2017

M/s.Reliance General Insurance Company Limited,
through its Branch Manager,
No.10/4/4, 2nd Floor Thaha Plaza,
South Bypass Road,
Vannarpettai,
Tirunelveli. ... Appellant/2nd respondent

Vs.

1.N.Murugan ... 1st respondent/Claimant

2.Pitchaimani Augustin ... 2nd respondent/1st respondent

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 26.04.2016, passed in M.C.O.P.No.59 of 2013 by the Motor Accident Claims Tribunal / Principal Subordinate Court, Tirunelveli.

For appellant : Mr.V.Sakthivel

For 1st respondent : Mr.T.Selvakumaran

For 2nd respondent : No appearance

JUDGMENT

It is a case of injury. On 25.05.2011 at about 3.15 p.m., the claimant was riding his motorcycle on Sipcot Gangaikondan Main Road, towards ATC Tyre Company. At that time, the second respondent herein, who was coming in the opposite direction, rode his two wheeler in rash and negligent manner and dashed against the petitioner's vehicle, due to which the first respondent / claimant sustained fracture on the right leg and his right leg knee dislocated. The claimant filed claim petition claiming Rs.10 lakhs as compensation. The Tribunal, after considering the oral and documentary evidence, has awarded Rs.2,62,000/- as compensation. The Tribunal has directed the appellant / Insurance Company to pay the entire compensation with 7.5% interest from the date of petition till the date of realization along with proportionate costs. The appellant / Insurance Company has filed this appeal only questioning the liability.

2. The learned counsel appearing for the appellant / Insurance Company would submit that the FIR has been registered only against the claimant and therefore, the liability ought not to have been fixed by the Tribunal on the 2nd respondent herein. Therefore, the appellant/Insurance company is not liable to pay the compensation. He would further submit that at the time of the accident, the second respondent herein was not in possession of driving license and therefore, the appellant/Insurance Company is not liable to satisfy the award, as the second respondent has violated the policy condition. Thus, he prayed to exonerate the appellant/Insurance company from payment of compensation to the first respondent/claimant.

3. The learned counsel appearing for the first respondent/claimant would submit that based on the registration of FIR, the negligence cannot be fixed on the first respondent/claimant and that as the appellant/Insurance Company has not produced any document in order to substantiate his contention that the second respondent/1st respondent had no driving license at the time of the accident, the contention of the appellant/Insurance Company cannot be sustained. Thus, he prayed to dismiss the appeal.

4. Heard the learned counsel appearing for the parties and perused the records carefully.

5. Merely because FIR has been registered only against the claimant, the Court cannot rush to the conclusion that the entire negligence could have been caused only by the claimant. FIR is not a conclusive proof. The contents of the FIR has to be proved in the manner known to law. Even if culpability is proved, it is the bounden duty of the Tribunal to independently assess evidence to arrive at conclusion regarding negligence. Here, in this case, the claimant, who was examined as PW1, has categorically stated in his evidence that the accident was caused only due to rash and negligent riding of the second respondent herein. The 2nd respondent herein remained *ex parte* before the Tribunal. No independent witness was examined on the side of the appellant/Insurance company to rebut the evidence of PW1. Even the maker of complaint - Ex.R1 against the claimant was not examined. As there is no valid evidence produced by the appellant / Insurance Company with regard to negligence on the part of the claimant, the Tribunal has fixed the entire negligence on the 2nd respondent herein.

6. The appellant/Insurance Company has admitted that at the time of the accident, the Insurance was in effect. Though it is alleged by the appellant/Insurance Company that the 2nd respondent had no driving license at the time of the accident, he has not proved the same by producing any oral and documentary evidence. Therefore, the Court below has vicariously fixed entire liability on the appellant/ Insurance Company. This Court does not find any reason to interfere with the said finding of the Tribunal.

7. In view of the above, this Civil Miscellaneous Appeal is liable to be dismissed and accordingly, dismissed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/claimant is permitted to withdraw the same by filing an application before the Tribunal. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To
The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

COPY TO:
The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-72475[F] dated 01/07/2019)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-72635[F] dated 02/07/2019)

C.M.A(MD).No.1225 of 2017
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