

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.141 of 2013

and

M.P.No.1 of 2013

Divisional Manager,

The New India Assurance Company,

Big Bazaar,

Tiruvannamalai.

... Appellant/2nd Respondent

Vs.

1.G.Ashraf

...Ist Respondent/Claimant

2.D.Shanmugam

...2nd Respondent/Ist Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.07.2011 made in M.C.O.P.No.495 of 2006 on the file of Motor Accident Claims Tribunal, Sub Court, Tirupattur.

For Appellant : Mr.Elveera Ravindran

for Mr.K.Vinoth

For R1 : Mrs.M.Malar

For R2 : Mr.B.Gopinath

J U D G M E N T

The New India Assurance Company Limited, the second respondent in MCOP.No.495 of 2006 on the file of the Motor Accidents Claims Tribunal/Sub Court, Tirupattur, has filed the present appeal questioning the liability and the quantum of compensation awarded by the Tribunal. The claimant / first respondent filed the above said claim petition under Section 166 (A) of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injury sustained by the claimant in a road accident that took place on 14.08.2006.

2. The case of the claimant/1st respondent is that on 14.08.2006, the claimant was travelling in a Auto Rickshaw bearing registration No.TN-23-K-3169 from Kandili to Tirupattur. When the auto was proceeding near Murugan Mesthiri house at Kasinayakanpatti Village, the driver of the auto rickshaw drove the vehicle in a rash and negligent manner without following any

traffic rules. At that time, one dog crossed the road. Suddenly, the driver applied the break to stop the vehicle, but, he could not control the speed of the auto rickshaw and hence, the auto rickshaw hit against the tree. Due to the accident, the claimant/first respondent sustained grievous injuries on his left side forehead and all over the body. Therefore, he filed a claim petition claiming a sum of Rs.3,00,000/- as compensation.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent driving by the driver of the auto belonging to the second respondent and directed the appellant/Insurance Company, being the insurer of the vehicle, to pay a sum of Rs.60,000/- as compensation to the first respondent/claimant.

4.Against the said award dated 25.07.2011 made in M.C.O.P.No.495 of 2006, the appellant/Insurance Company has come out with the present appeal.

5.Heard the learned counsel for the appellant and the learned counsel appearing for the first and second respondents and perused the materials available on record.

6.From the materials available on record, it is seen that the appellant-Insurance Company has contended that the 2nd respondent drove the auto in a rash and negligent manner and dashed against the tree. The Tribunal considering the evidence of 1st respondent, FIR and Charge Sheet, held that the accident occurred only due to the rash and negligent driving by the 2nd respondent. In view of the contention of the appellant that the 2nd respondent was driving the offending vehicle in a rash and negligent manner, which was not disproved by second respondent, the Tribunal fixed the liability only on the part of the Insurance Company. The appellant/Insurance Company is hereby directed to pay the compensation to the claimant and recover the same from the owner of the lorry in accordance with law. Challenge is against the liability fastened on the Insurance Company & also the quantum of compensation. Now, it is held that the 1st respondent is an "un-authorized passenger" in the goods vehicle. Hence, the 2nd respectively who is the driver/owner of the offending vehicle alone is responsible for the accident. Hence, is liable to pay compensation. Therefore, now pay and recovery has been ordered. First Insurance Company has to pay and then entitled to recover the same from the 2nd respondent/driver/owner of the vehicle.

7. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.60,000/- awarded by the Tribunal as

compensation to the first respondent/claimant, along with interest and costs is confirmed. The appellant/ Insurance Company is directed to deposit the award amount 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 at first instance and recover the same from the second respondent to the credit of M.C.O.P.No.495 of 2006. On such deposit, the first 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. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sbn

To

Motor Accident Claims Tribunal,
Sub Court,
Tirupattur.

+1cc to M/s.M.Malar, Advocate Sr.8538
+1cc to M/s.Elveera Ravindran, Advocate Sr.8166

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