IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1546 of 2015

M.Subramani ... Appellant /Claimant

Vs.

1.P.Prakash

2.National Insurance Company Limited
Represented by its Branch Manager,
1st Floor, Karthikeya Complex,
403, B-10, Mettur Main Road,
Bhavani. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.02.2015 made in M.C.O.P.No.27 of 2013 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai.

For Appellant : Mr.C.Ramaraj for Mr.M.Guruprasad

For R2 : Mr.S.Vadivel

R1 :NA

J U D G M E N T

The Civil Miscellaneous Appeal is filed for setting aside the portion of the award dismissing the claim petition against 2nd respondent by the Tribunal in the award dated 19.02.2015 made in M.C.O.P.No.27 of 2013 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai.

2.The appellant is claimant in M.C.O.P.No.27 of 2013 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.07.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent, insured with the 2nd respondent/Insurance Company and directed the 1st respondent to pay a sum of Rs.2,00,087/- as compensation to the appellant and dismissed the claim petition as against the 2nd respondent/Insurance Company.

4.Challenging the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that at the time of accident the 1st respondent was possessing valid driving license and the vehicle was insured with the 2nd respondent/Insurance Company. The Tribunal erred in dismissing the claim petition as against the 2nd respondent, accepting the contention of the 2nd respondent/Insurance Company. Since the appellant is the third party, the Tribunal ought to have directed the 2nd respondent/Insurance Company to pay the compensation to the appellant at the first instance and recover the same from the 1st respondent and prayed for allowing the appeal.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that at the time of accident the 1st respondent/owner cum rider of the motorcycle was under the influence of alcohol and the 1st respondent has admitted the same in his evidence. Therefore, the Tribunal considering the violation of policy condition by the 1st respondent, rightly dismissed the claim petition against the 2nd respondent and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8.It is the contention of the appellant that while he was riding his two wheeler, the 1st respondent drove his two wheeler in a rash and negligent manner, dashed against the appellant and cause the accident. The appellant proved the said contention by examining himself as PW1 and marking FIR as Ex.P1 which was registered against the 1st respondent. The Tribunal considering the evidence of the appellant as PW1 and Ex.P1/FIR, held that the accident occurred only due to rash and negligent riding by the 1st respondent. The Tribunal dismissed the claim petition as against the 2nd respondent/Insurance Company on the ground that the 1st respondent admitted that he has consumed alcohol at the time of accident. The 1st respondent after filing counter statement did not contest the claim petition and did not let in any evidence to disprove the contention of the 2nd respondent/Insurance Company. The Tribunal has stated that the 1st respondent admitted the fact that he consumed alcohol and dismissed the claim petition as against the 2nd respondent/Insurance Company. At the time of accident, there was valid insurance policy and the 1st respondent was possessing valid driving license. Considering the above facts and since the appellant is a third party, it is justified if the 2nd respondent/Insurance Company is directed to pay the compensation at the first instance and recover the same from the 1st respondent.

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,00,087/- is confirmed together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, at the first instance and recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Subordinate Judge,
The Motor Accident Claims Tribunal,
Perundurai.

Copy to
The Section Officer,
V.R.Section,
High Court, Chennai.

+1cc to Mr.M.Guruprasad, Advocate Sr.16307
+1cc to Mr.S.Vadivel, Advocate Sr.15514

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srg 09/11/2020