IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1911 of 2011

The New India Assurance Company Ltd.,
36, 1st Floor, I Moore Street, Chennai -1. .. Appellant

Vs.

1. A. Ramu

2. G. Kasthuri ...Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment & Decree of the Learned Motor Accidents Claims Tribunal, III Court of Small causes, Chennai, made in M.C.O.P.No.314 of 2002 dated 29.06.2010.

For Appellant : Mr.S.Jaya sankar

For Respondent-1 : Mr.M.Selvam
For Respondent-2 : Served, name printed(No Appearance)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the Judgment and Decree of the Learned Motor Accidents Claims Tribunal, III court of Small Causes, Chennai, made in M.C.O.P.No.314 of 2002 dated 29.06.2010.

2.The appellant is the insurer of the alleged vehicle involved in the accident. The first and second respondents are the claimant and insurer of the alleged vehicle involved in the accident.

3.The case of the appellant/claimant is that on 22.08.2001 at 19.00 hours, when the first respondent was travelling in a Maruthi Van bearing Registration No.TN-07-X-5869 from Chennai to Marakkanam on E.C.R. Road, at that time a Tata Indica Car bearing Registration No.TN-09-Q-3151 was proceeding from Pondicherry to Chennai. In that process a bullock cart was proceeding in front of Maruthi Van, in order to over take the bullock cart, the driver of the Maruthi Van turned to right side and hit the Indica car. Hence, the accident took place. Therefore the claimant/first respondent herein filed a claim petition before the Tribunal seeking Rs.4,00,000/- as compensation against the insurer and owner of the vehicle.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to the second respondent and insured with the second respondent and allowed the case in part and directed the appellant/Insurance Company to pay a sum of Rs.67,200/- with interest at the rate of 7.5% p.a from the date of petition till the date of realisation.

5.Challenging the negligence as well as quantum, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant would contend that the Tribunal ought to have exonerated the appellant/Insurance company from the liability on the ground that there was no coverage for passenger, since the policy was an “Act only” policy.

7.Per contra, the learned counsel appearing for the first respondent/claimant would contend that due to the accident the first respondent comminated fracture on left humerus and has undergone bone surgery, whereby plate and screw were inserted. He would further contend that the claimant was self employed and earning Rs.12,000/- per month, whereas the Tribunal without considering the same has awarder a meager amount as compensation. Hence, prays to enhance the compensation amount.

8.Despite serving notice and name printed in the cause list, there is no representation for the second respondent. Hence, the main appeal itself is taken up for final disposal, since the disposal of the case will not affect the second respondent in any manner.

9. Heard both sides and also perused all the materials available on record.

10.On a perusal of the record, with regard to the negligence aspect, the learned Judge before the Tribunal has raised in point no.1, i.e. Who is negligent for the accident?. The said aspect was discussed elaborately. The appellant was examined as P.W.1 and he deposed that the negligence on the part of the driver of the second respondent vehicle is the cause for the accident. Ex.P.1/F.I.R was also registered against the second respondent's vehicle driver. The deposition of first respondent vehicle remains unchallenged. Therefore, the Tribunal arrived at a conclusion that the negligence exists on the side of the driver of the vehicle of the second respondent and as the insurer of the alleged vehicle involved in the accident, the appellant/Insurance Company is liable to pay compensation, which is in accordance with law and there is no infirmity and the same is confirmed as such. There was no valid rebuttal evidence on the side of the respondents before the Tribunal to challenge their negligence aspect.

11.With regard to quantum, the Tribunal considering the avocation of the injured fixed Rs.3,000/- as monthly income and due to the accident he was not able to go for job for atleast 3 months. Hence, Rs.9,000/- was awarded towards loss of income. Taking note of Ex.P.3/Discharge summary the Tribunal has awarded Rs.2,000/- each towards transportation, Extra nourishment, Cost of attendant and Medical Expenses. Considering Ex.P.4/wound certificate the Tribunal has awarded Rs.10,000/- towards pain and suffering. Ex.P.7/Disability Certificate reveals the fact that the claimant had sustained 40% partial and permanent disability and taking into account the year of accident Rs.1,000/- per percentage was determined and awarded Rs.40,000/- (40% x 1,000/-) towards the head disability. Apart from this Rs.200/- was awarded towards the head damage to clothes. Thus, the total compensation was quantified at Rs.67,200/-.
Thus, the amount awarded by the Tribunal is tabulated hereunder:

Particulars	Amount awarded by the Tribunal
Loss of income for 3 months at the rate of Rs.3,000/- per month	Rs.9,000/-
Transportation	Rs.2,000/-
Extra Nourishment	Rs.2,000/-
Damage to clothes as claimed	Rs.200/-
Medical expenses	Rs.2,000/-
Cost of attendant	Rs.2,000/-
Pain and sufferings	Rs.10,000/-
Disability of 40% at the rate of Rs.1,000/- per disability	Rs.40,000/-
Total	Rs.67,200/-

12.In view of the above, this Court on re-appreciating the evidence observed that in the case on hand, admittedly the vehicle belongs to the second respondent and the same was insured with the appellant. Ex.R1 is the policy copy which covers the period from 12.03.2001 to 11.03.2002. The accident had happened on 22.08.2001, as on the date of accident, the policy was in existence. Now according to the appellant, it is an Act policy and therefore the occupants are not liable. The claimant is neither insurer nor insured. On perusal of Ex.R.1, the liability of the appellant/Insurance Company is extended to Rs.2,50,0001/-. In the second page, it is mentioned as schedule of premium, TP Cover. "B.T.P.- Basic

For third party property damages of 2,50,001, IMT-20, PA to unnamed passengers Number. 8, amount 25,000/- per person WC to employee- 1", So, on perusal for personal accident the policy covers to unnamed passengers No.8 and for each person Rs.25,000/-. So for 8 persons the second respondent is liable to extent of Rs.25,000/- per head. In the same policy Ex.R1, there is also mention as Important Notice:

> " The insured is not indemnified, if, the vehicle is used or driver otherwise than in accordance with this schedule. Any payment made by the company by reason of wider terms appearing in the certificate in order to comply with the Motor Vehicles Act, 1988 is recoverable from the insured"

Therefore, it is clear that there is avoidance clause in the policy itself, which reveals that if any payment by the company by reason of terms appearing in order to comply with the M.C. Act 1988 has recoverable from the insured.

13.In view of the avoidance clause in the policy under Ex.R1 and there is also mention about liability of Rs.25,000/- for each unnamed person in the Maruthi Car. So, as a insurer of the second respondent's vehicle, the appellant is liable to compensate only to the extent of Rs.25,000/-. The remaining amount of compensation shall be payable by the owner of the vehicle/ second respondent herein.

14.At this juncture this Court is inclined to reiterate that even though the liability of the appellant/Insurance company is only Rs.25,000/-, as the insurer of the alleged vehicle involved in the accident the appellant insurer is directed to pay the entire compensation amount (Rs.67,200/-) and recover (Rs.42,200/-) from the owner of the vehicle(G.Kasthuri).

15.In the result this appeal is dismissed and the second respondent/Insurance Company is directed to deposit the entire compensation amount i.e.,Rs.67,200/- awarded by this Court at the rate of 7.5% per annum from the date of petition till the date of realization, after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment and recover Rs.42,200/- from the owner of the vehicle/second respondent herein. On such deposit, the first respondent/claimant is permitted to withdraw the same, after deducting the amount already withdrawn, if any, on making proper application before the Tribunal. No Costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Learned III Judge,
Motor Accidents Claims Tribunal,
Court of Small causes, Chennai,

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

1 cc to Mr.M. Selvam, Advocate, Sr. 17830

C.M.A.No.1911 of 2011

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