

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1673 of 2013

and

MP No.1 of 2013

The United Insurance Co. Ltd.,
No.38, Anna Salai, Chennai - 2. Appellant /2nd Respondent

Versus

1. D. Saravanan .. 1st Respondent/Claimant
2. V. Ravi ..2nd Respondent/ 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in MACTOP No.4671 of 2006 on the file of the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes), at Chennai, dated 11.07.2011.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : R1 - Served - No appearance
R2 - Exparte

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 11.07.2011 passed by the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes), Chennai in MCOP No.4671 of 2006.

2. The first respondent sustained injuries on 15.09.2006 as a result of an accident caused by two vehicles both insured with the appellant. The first respondent was the rider of motor cycle bearing Regn. No.TN-10-V-1368 and due to an head on collision with the motor cycle bearing Registration No.TN-07-R-1012 coming from the opposite direction, he sustained injuries.

3. The first respondent preferred a claim before the Motor Accident Claims Tribunal (III Judge, Court of Small Causes), Chennai seeking compensation for the injuries sustained by him due to the accident.

4. The Motor Accident Claims Tribunal (III Judge, Court of Small Causes), Chennai under the impugned common award fixed the contributory negligence of the first respondent herein who was the rider of the motor cycle bearing Registration No.TN-07-R-1012 (insured vehicle) at 50% and the contributory negligence of the rider of the motor cycle bearing Registration No.TN-10-M-1368 at 50%. The Tribunal assessed the total compensation payable to the first respondent at Rs.1,54,200/- as detailed hereunder :-

Heads	Amount awarded by the Tribunal (Rs.)
Transportation	3000
Extra nourishment	3000
Damage to clothes	1000
Medical expenses	67200
Pain and suffering	10000
Disability of 35% at the rate of Rs.20,000/- per disability	70000
Total compensation is fixed at	1,54,200

5. Since, contributory negligence was fixed at 50% on the first respondent, the Tribunal directed the appellant / Insurance Company to pay 50% of the award amount to the first respondent amounting to Rs.77,100/- (i.e. 50% on Rs.1,54,200/-) together with interests and costs.

6. Aggrieved by the finding given by the Tribunal that the rider of the Motor Cycle bearing Registration No.TN-07-R-1012 insured with the appellant is also equally responsible for the cause of the accident, this appeal has been filed by the Insurance Company. The Insurance Company has not challenged the quantum of compensation assessed by the Tribunal but has only challenged its liability to pay the compensation to the first respondent.

7. Before the Tribunal, the first respondent / claimant has filed nine documents which were marked as Exs.P1 to P9 and two witnesses were examined viz., the first respondent / claimant himself as PW1 and the Doctor who examined him as PW3. PW2 is the other claimant in MCOP No.4725 of 2006, which is also the subject matter of the common impugned award dated 11.07.2011.

On the side of the appellant / Insurance Company two documents were filed viz., R1, authorisation letter and Ex.R2, investigation report and one witness was examined viz., RW1 the investigator of the appellant / Insurance Company.

8. Admittedly, as seen from the evidence available on record the accident is a head on collision between two vehicles. One vehicle bearing Registration No.TN-07-R-1012 was driven by the first respondent and the other is the opposite vehicle bearing Registration NoTN-10-M-1368. The FIR, (Ex.P1) has been registered against the vehicle driven by the first respondent. But, the rider of the motor cycle which was coming from the opposite direction, when dashed against the first respondent's motor cycle was not examined as a witness before the Tribunal. Any adjudication with regards to the finding of negligence is based on preponderance of probability. Being a head on collision, the Tribunal after giving due consideration to the evidence available on record including the oral and documentary evidence adduced by the appellant / Insurance company has come to the conclusion that both the vehicles involved in the accident are at fault and has rightly fixed the contributory negligence of both the riders of the respective vehicles in the ratio of 50 : 50.

9. For the foregoing reasons this Court does not find any infirmity in the findings of the Tribunal. Therefore, there is no merit in this appeal and accordingly, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10. The Appellant / Insurance Company is directed to deposit the entire award (50%) amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.4671 of 2006, on the file of the Motor Accidents Claims Tribunal, (III Court of Small Causes, Chennai), within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent /claimant through RTGS, within a period of two weeks thereafter.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vsi2

To

1.Motor Accidents Claims Tribunal
The III Judge,
Court of Small Causes
at Chennai

Copy to:

The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

C.M.A.No.1673 of 2013

VBA (CO)
RMP (20/04/2021)



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