

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.2776 of 2012

and

M.P.No.01 of 2012

The Manager,
The United India Insurance Co.Ltd.,
Micro Office, 29K,First Floor,
C.N.A. Road,
Khaderpet,
Vaniyambadi. ... Appellant/3rd Respondent

.Vs.

1.P.Mansoor Ahmed ... 1st Respondent /Petitioner
2.Kuppan
3.The Managing Director,
Tamilnadu State Transport Corporation Ltd (Villupuram),
Vellore District.

...Respondents2 &3 /Respondents 1&2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 25.05.2009 passed in MCOP.No.238 of 2007 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Vellore.

For Appellant : Mr.M.Krishnamoorthy
For R1 : Not ready in notice
For R2 : Ex-parte
For R3 : Mr.K.J.Sivakumar

JUDGMENT

The appellant is the second respondent in MCOP.No.238 of 2007 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Vellore. The United India Insurance Company limited has filed the present appeal. The first respondent filed the said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,50,000/- for the injuries sustained by him, in a road accident that took place on 16.02.2006.

2. The case of the claimant is that on 16.02.2006, the first respondent/claimant was riding his Yamaha Libero vehicle bearing Regn.No.TN-23-K-0830, from Vaniyambadi to Vellore to the National Highways, at about 01.39 hours in the afternoon. When the 2nd respondent, who driven the Government bus bearing Regn.No.TN23N1140 in a rash and negligent manner, overtook the first respondent vehicle, suddenly turned the vehicle on the right side and thereby the second respondent vehicle hit against the first respondent's vehicle. Due to the said incident, the first respondent/claimant sustained grievous injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the Government bus bearing Registration No. TN 23 N 1140 was the cause of the accident and hence, the 3rd respondent as well as the Insurance Company are liable to pay compensation to him jointly and severally.

3. The learned Motor Accident Claims Tribunal / Chief Judicial Magistrate, Vellore after analysing the evidence on record, awarded a compensation of Rs.25,000/- together with interest at the rate of 7.5% per annum to the claimant. Aggrieved over the orders passed by the Tribunal, the United India Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. The learned counsel for the appellant would submit that the Judgment and decree of the Tribunal is contrary to law, weight of evidence and probabilities of the case. The appellant had obtained permission under Sec.170 of Motor Vehicles Act, 1988 to contest and take over all the defences available to the insured owner of the vehicle. The Tribunal after having held that the claimant himself was solely responsible for the accident, erred in granting the award under no fault liability against the insurer of the motorcycle owned and ridden by him. The Tribunal ought to have dismissed the claim as against his insurer, the appellant and passed the award under no fault liability only against the third respondent, since the insured is not entitled to get compensation from his insurer under no fault liability. The Tribunal overlooked the aspect that the liability of the appellant is to indemnify the insured, the claimant from liability of third parties. The Tribunal erred in not considering the fact as to whether the alleged disability suffered by the claimant fits into the definition of Sec.140 of MV Act. The Tribunal ought to have fastened the liability only on the third respondent, State Transport Corporation as their bus was involved in the accident and their driver was prosecuted for causing the accident and they are liable to pay compensation even under no fault liability. Hence, the learned counsel prays to allow this appeal.

5. Heard the learned counsel for the appellant and the learned counsel appearing for the third respondent and perused the materials available on record.

6. It is seen from the evidence adduced on either side the Tribunal has awarded a sum of Rs.25,000/- on no fault liability.

7. On perusal of the order passed by the Court below, this Court finds that the first respondent/claimant has also driven his motor cycle in a negligent manner. Therefore, it is appropriate to fix the negligence in the ratio of 50:50 (i.e), 50% on the part of claimant and 50% on the part of the second respondent. Though the first respondent/claimant was negligent while riding his motor cycle, the driver of the offending bus is also equally responsible for the accident, because he should have ensured that the traffic rules are followed before driving the bus. Since he has failed in his duty, it is relevant to fix 50% negligence on the part of the driver. Thus, the first respondent/ claimant is entitled for 50% of Rs.25,000/, (i.e.,) Rs.12,500/-. The appellant / Insurance Company is directed to pay the modified amount of Rs.12,500/- together with interest at the rate of 7.5% to the credit of MCOP.No.238 of 2007 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Vellore within a period of six months from the date of receipt of a copy of this order. On such deposit, the claimant in M.C.O.P.No.238 of 2007 is permitted to withdraw the award amount along with interest and costs.

8. In the result,

(i) The Civil Miscellaneous Appeal is disposed of. No costs. Consequently connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Vellore.

Copy To:
The Section Officer,
VR Section,
High Court Madras.

+1 cc to Mr.K.J.Sivakumar, Advocate Sr.No. 1529
+1 cc to Mr.M.Krishnamurthy, Advocate Sr.No. 1540

CMA.No.2776 of 2012
and
M.P.No.01 of 2012

MP (CO)
RMP (05/05/2021)



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