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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2021
PRONOUNCED ON : 17.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1241 of 2015

K.Nizam

...Appellant

Vs.

1.S.Varadharajan
(Exparte in Lower Court)

2.United India Ins.Co.Ltd,
No.20, 73C, MTH Road, Ambattur,
Chennai - 600 053.

3.P.Selvaraj

4.Iffco Tokio Insurance Company Ltd,
No.128, Habibullah Road, T.Nagar,
Chennai-17.

...Respondents

(Impleaded as per order in M.P.No.999/2013,
dated 14.08.2013)

PRAYER : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.12.2014 and made in MCOP.No.975 of 2007, on the file of the Motor Accident Claims Tribunal, (III Judge), Small Causes Court, Chennai.

For Appellant : Mr.T.G.Balachandran

For R1 : Mr.V.G.Anbarasu

For R2 : Mr.K.Siranjeevi
For Mr.C.Paranthaman

For R3 : Mr.S.Parthasarathy

For R4 : Mr.E.Rajadurai
For M/s.M.B.Gopalan Associates



JUDGMENT

The claim petitioner is the appellant herein.

2. The claim petitioner has filed M.C.O.P.No.975/2017 claiming compensation for the injuries sustained in the road transport accident happened on 13.02.2007 and the same was dismissed and hence, this Civil Miscellaneous Appeal.

3. For the sake of convenience, the parties are referred as per ranking before the trial Court.

4. The admitted case of the claim petitioner is that on 13.02.2007 at about 19.20 hours while the petitioner was travelling as a pillion rider in a motorcycle bearing Regn.No.TN-20-A-8109 and proceeding proceeding on the new overbridge at Peters Road from West to East and went to the wrong side and had collision with another motor cycle bearing Regn.No.TN-09-AP-2755 coming in the opposite direction and hit against the motorcycle TN-09-AP-2755, thereby the petitioner sustained grievous injuries and the accident was caused due to rashness and negligence of the rider of the motor cycle bearing Regn.No.TN 20 A 8109.

5. On perusal of the pleadings and the evidence of P.W.1 injured, this Court finds that the petitioner has been the pillion rider in the first petitioner's vehicle which is insured with the second respondent and the rider of the petitioner's vehicle is the tortfeasor and is the cause for the accident. The first respondent vehicle rider has collided with the third respondent vehicle for which the 4th respondent is the insurance. Charge sheet has been laid against the rider Sabeer of the first respondent vehicle.

6. As per Ex.R2 copy of the Insurance policy, the scooter two wheeler wherein the petitioner was travelled as a pillion rider is covered with the respondent-Insurance Company both the respondent Insurance Company in respect of their party claim along namely 'act one policy' otherwise called 'statutory policy'.

7. It appears from the records that originally the petition was filed under Section 166 subsequently petition was filed to amend the provision into 163(a) of the M.V. Act.

8. The 4th respondent/Insurance Company of the vehicle in which the claim petitioner travelled as a pillion rider has filed a counter statement denying the liability by raising the plea that the petition is not maintainable against its own Insurance company.



9. The point that requires to be determined in the Civil Miscellaneous Appeal is that whether the fourth respondent is liable to pay compensation for the accident committed by the rider of the petitioner-vehicle. Admittedly, the third respondent is the owner of the vehicle and the 4th respondent is the insurance of the vehicle.

10. The claim petitioner being an injured can claim for compensation under Section 163(A) of the M.V Act only from the vehicle and the insurance which was at fault not against the person who is victimized and therefore, the third and fourth respondents whose vehicle is not at fault cannot be held a liable.

11. Now the point for consideration is since the tort was committed by the rider of the petitioner, whether the 2nd respondent is liable to indemnify the R1. In respect of the liability of the second respondent, the Insurance Company has examined its Officer as R.W.1 and marked Ex.R2- copy of the Insurance Policy and it discloses that the Insurance policy is only an act policy and no additional premium has been paid to cover the pillon rider. In the absence of any endorsement as to the payment of premium that covering the policy rider, the second respondent-Insurance Company cannot be held a liable and hence the second respondent is not liable to indemnify or pay any amount to the claim petitioner.

12. From the evidence of P.W.2 Doctor and Ex.P5 Disability Certificate, the Tribunal has come to the conclusion that though P.W.2 Doctor has assessed the disability at 30% for the injuries sustained by the petitioner and fracture is now united in expansion, movement of right foot restricted by 30 decrees. However the injuries has spoken to by the Doctor does not called as the schedule injury and it is classified as 'partial and permanent injury' and therefore provisions of 163(A) does not get attracted. Viewing so, the Tribunal has rightly dismissed the claim petition and I find that the nature of the injury has spoken to by P.W.1 Doctor has reflected under Ex.P5 Disability Certificate having does not fall under the category of permanent injury, they are not entitled for any compensation under Section 163(A) of the Act and hence the finding rendered by the Tribunal is appears to be correct and does not warrant any interference.

13. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

nvi



To

The Motor Accident Claims Tribunal,
(III Judge), Small Causes Court,
Chennai.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.C.Paranthaman, Advocate, S.R.No.23412

+1cc to M/s.S.Parthasarathy, Advocate, S.R.No.23253

+1cc to Mr.V.G.Anbarasu, Advocate, S.R.No.23463

C.M.A.No.1241 of 2015

SR-II(CO)
RVM(15/11/2021)