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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1542 of 2014

and M.P.No.1 of 2014

Bajaj Allianz General Insurance Co. Ltd.
Nos.25 and 26, Prince Tower
4th floor, College road, Nungambakkam
Chennai-6.

..Appellant/2nd Respondent

Vs.

1.K.Venkatesan

..1st Respondent/Petitioner

2.R.Viswanathan

..2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 14.08.2013 made in M.C.O.P.No.2133 of 2007 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Petitioner : Mr.S.Arun Kumar

For Respondents: M/s.K. Varadha Kamaraj

for R1 Not Ready Notice for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company to set aside the award dated 14.08.2013 made in M.C.O.P.No.2133 of 2007 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.2133 of 2007 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. The 1st respondent filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.03.2007.



3. According to the 1st respondent, on the date of accident i.e., on 30.03.2007, at about 22.15 hours, while he was travelling as a pillion rider in Honda Unicorn motorcycle bearing Registration No. TN-21-P-5416, the 2nd respondent, rider-cum-owner of the motorcycle rode the same in a rash and negligent manner, hit against the unknown vehicle and caused the accident. Due to the said impact, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the 2nd respondent, rider-cum-owner of the motorcycle and appellant, insurer of the motorcycle.

4. The 2nd respondent, rider-cum-owner of the motorcycle, filed counter statement stating that he is in possession of valid insurance policy as well as valid driving license at the time of accident. Therefore, the appellant/Insurance Company as insurer of the motorcycle, is liable to pay compensation to the 1st respondent. The 2nd respondent has also denied the age, avocation, income and nature of injuries sustained by the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

5. The appellant/Insurance Company, insurer of the said motorcycle filed counter statement denying the averments made by the 1st respondent and stated that the motorcycle belonging to the 2nd respondent was hit by an unknown vehicle, which came in a rash and negligent manner and thereby, contributed to the accident. The 1st respondent can claim compensation from solatium fund created by the Government under 'hit and run cases'. At the time of accident, the 1st respondent was the pillion rider in the motorcycle, for whom, there is no coverage as well as package policy, since no extra premium was collected towards pillion rider. Therefore, the appellant is not liable to pay any compensation to the 1st respondent. The appellant/Insurance Company has also denied the age, avocation, income and nature of injuries sustained by the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1, Dr.K.J.Mathiazhagan, was examined as P.W.2 and 11 documents were marked as Exs.P1 to P11. The rider-cum-owner of the motorcycle examined himself as R.W.1. The appellant/Insurance Company examined one Lakshmanan, Legal Adviser of the Insurance company as R.W.2 and marked four documents as Exs.R1 to R4.



7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 2nd respondent, rider-cum-owner of the motorcycle and directed the appellant/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.4,96,720/- as compensation to the 1st respondent.

8.Challenging the liability fastened on them, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erred in directing the appellant to pay compensation, when the vehicle belonging to the 2nd respondent insured with appellant was not responsible for the accident. The 1st respondent having filed and marked F.I.R. has to accept the contents of F.I.R. in its entirety. He is estopped from pleading contrary to F.I.R. In the absence of any independent witness, the Tribunal erred in accepting interested witness of P.W.1 and R.W.1. The accident occurred only due to rash and negligent driving by driver of unidentified lorry and the Tribunal cannot presume composite negligence only because two vehicles are involved in the accident. The 1st respondent has filed claim petition against the 2nd respondent and appellant, since Police could not trace the lorry, which caused accident and 2nd respondent colluded with 1st respondent supporting false claim of the 1st respondent. In any event, the Tribunal ought to have held that 1st respondent should approach the Government for necessary relief and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that 2nd respondent lodged complaint only to escape from his liability. During trial, he denied the suggestion put by the counsel for the appellant that accident occurred due to negligent driving by the driver of unidentified lorry. The Tribunal considering the evidence let in on oath, rightly fixed negligence on the 2nd respondent and liability on the appellant and directed the appellant to pay compensation. There is no error in the award of the Tribunal and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant through Video-conferencing/Hybrid mode as well as the learned counsel for the 1st respondent, who appeared before this Court physically and perused the entire materials on record.



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12. From the materials on record, it is seen that it is the case of the 1st respondent that while he was riding as a pillion in the motorcycle belonging to the 2nd respondent, the 2nd respondent rode the motorcycle in a rash and negligent manner, dashed against the unknown lorry and caused the accident. To support his claim, the 1st respondent examined himself as P.W.1 and deposed to that effect. The 1st respondent also filed and marked F.I.R. as Ex.P1 and other documents with regard to injuries sustained by him. The 2nd respondent, who is owner and rider of the motorcycle at the time of accident, filed counter statement denying the claim of the 1st respondent. But the 2nd respondent/R.W.1 did not deny his rash and negligent riding of motorcycle at the time of accident. It is the case of the 2nd respondent that accident occurred only when an unidentified lorry dashed on the motorcycle, the 2nd respondent lodged complaint only against driver of unidentified lorry, the Police could not trace the lorry and therefore, the respondents colluded together and the 1st respondent filed false claim petition. The appellant examined Official from their Office, but did not examine any eye-witness to substantiate their case. The Tribunal took note of the fact that the counsel for the appellant put a suggestion to the 2nd respondent in his cross-examination that he rode the vehicle in a rash and negligent manner and caused the accident. The contention of the learned counsel for the appellant that in view of contents of F.I.R., which was registered based on the complaint given by the 2nd respondent, the Tribunal ought to have rejected the evidence of P.W.1, which is contrary to the contents of F.I.R., is not acceptable. Negligence cannot be fixed based on the contents of F.I.R. or relying on criminal proceedings. The evidence given by the party before the Tribunal on oath must be given more weightage than the contents of F.I.R. or out come of the criminal proceedings. In the present case, the Tribunal properly considering the evidence of P.W.1, R.W.1 and in the absence of any contra evidence, held that the accident has occurred only due to rash and negligent riding by the 2nd respondent and directed the appellant being insurer of the motorcycle belonging to the 2nd respondent, to pay the compensation to the 1st respondent. There is no error in the award of the Tribunal warranting interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.4,96,720/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and



costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj
To
1.The II Judge
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2.The Section Officer
VR Section
High Court
Madras.

+1 CC to Mr.S. Arun Kumar, Advocate sr 64154
+1 CC to Mr.K.Varadha Kamaraj, Advocate sr 64154.

C.M.A.No.1542 of 2014
and M.P.No.1 of 2014

CP(CO)
SP(04/01/2022)