IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2021	Pronounced on : 03.02.2021

CORAM :

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.615 of 2017

K.M.Venkatesan ...Appellant / Petitioner

/versus/

1.K.Krishnamoorthy,

2.United India Insurance Company Limited,
Katpadi Road,
Vellore District.

3.Oriental Insurance Company Limited,
No.238, Arcot Road, Jambubala Complex,
1st Floor, Vellore - 4. ...Respondents / Respondents

Prayer : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.10.2016 made in M.C.O.P.No.1442 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Tirupattur.

For Appellant : Mr.V.Parivallal

For R1 & R2 : No appearance

For R3 : Mr.S.Arun Kumar

J U D G M E N T

The Appeal is filed by the claimant being aggrieved by the dismissal of his claim petition by the Motor Accident Tribunal.

2. According to the claim petition, on 13.10.2009 at about 9.45 p.m near Avinashi when the appellant herein driving his Eicher lorry bearing registration No.TN-49-V-0231 on Erode to Avinashi road, carrying vegetables, a motorcycle bearing registration No.TN-36-H-9389 driven rash and negligently by his rider hit the Eicher lorry with high speed from the opposite direction. At the same time, a swaraj mazda bearing registration No.TN-36-Y-6348 following the two wheeler rash and

negligently dashed against the Eicher lorry. Due to the impact, the claimant who was travelling in the Eicher lorry as driver-cum-owner sustained grievous injury on his left leg and sustained fracture on his right leg 3rd bone. The Eicher lorry also got extensively damaged. The two wheeler rider died on the way to hospital. The claimant was admitted in Sri Kumaran Hospital, Thiruppur and took treatment for his injury as inpatient on 22.10.2009 and thereafter, continued the treatment as out patient. The fracture sustained by him in the accident has affected his earning. Hence, claim of Rs.3,00,000/- made against the owner of the swaraj mazda lorry, the insurer of the swaraj mazda lorry and the insurer of the Eicher lorry holding them jointly and severally as respondents 1 to 3 respectively, to pay the said compensation.

3. The 3rd respondent/Oriental Insurance Company Limited, which is the insurer of the Eicher lorry has filed counter stating that, the accident occurred due to negligence of the claimant. A criminal case has been registered against him. The Insurance coverage for the Eicher lorry does not cover Personal Accident of owner-cum-driver. No additional premium paid by the vehicle owner to cover the Personal Accident. Hence, claim against the 3rd respondent is not maintainable. Further, the claimant has not sustained permanent disability, in the said accident. Also it was contended that the claimant had no valid driving licence, at the time of accident. Therefore, the liability as well as the quantum of compensation claimed in the petition were denied.

4. The 2nd respondent, who is the insurer of the swaraj mazda vehicle in the counter, has stated that the accident happened purely due to rash and negligently driving of the claimant. The driver of the swaraj mazda lorry, which is insured by the 2nd respondent was not at fault. The claimant rashly driven his vehicle and hit the motorcyclist first and then hit the swaraj mazda vehicle. In the said act of negligence, the motorcyclist died and the driver of the swaraj mazda sustained serious injury. The swaraj mazda lorry also got extensively damaged. Without impleading the owner and the insurer of the motorcycle, no proper adjudication could be made. None of the drivers of the three motor vehicles had valid driving licence. The swaraj mazda lorry not insured under the 2nd respondent. Hence, the 2nd respondent is not liable to pay any compensation.

5. Before the Tribunal, the claimant deposed as P.W.1, the doctor who has examined him clinically and given the disability certificate was examined as P.W.2. 16 Exhibits were marked in support of the claim petition. The driver of the swaraj mazda lorry was examined as R.W.1. The Assistant working in United India Insurance Company Limited, Vellore was examined

as R.W.2. One Swamykannu, who is the Administrative Officer of Oriental Insurance Company limited, the 3rd respondent examined as R.W.3. 11 Exhibits were marked on behalf of the respondent.

6. The Tribunal formulated the following point for consideration:-

(i). Whether the accident took place due to the rash and negligent driving of 1st respondent or of the petitioner? who is liable?

(ii). Whether the petitioner is entitled for compensation? If so, what is the quantum?

7. While the claimant has attributed the negligence on the part of the Two wheeler rider and the swaraj mazda lorry driver, the swaraj mazda lorry driver had mounted the witness box and examined as R.W.1. Denying the said allegation he given evidence contra to the claimant and also relied upon the F.I.R. registered against the claimant. The rough sketch of the accident spot and the Motor Vehicle Inspector report indicates that the accident occurred due to the fault of the claimant. The Tribunal, therefore, after appreciating the evidence has dismissed the claim petition concluding that the accident took place due to the fault of the petitioner claimant and therefore, he cannot claim any compensation.

8. The Learned Counsel appearing for the appellant would submit that the Tribunal failed to observe that the witnesses who were examined on behalf of the respondent are not eye witnesses. They are not competent to speak about the negligence. Further, when three vehicles are involved, negligence cannot be attributed solely on one person. Further, the vehicles are duly insured under package policy, the 3rd respondent, who is the insurer of the claimant's vehicle cannot deny its liability. While so, the Tribunal has grossly erred in holding that the 3rd respondent is not liable to compensate the injured claimant.

9. As per the testimony of the claimant, the accident happened due to sudden crossing of the two wheeler, to avoid the two wheeler, the petitioner has turned to his right and dashed against the swaraj mazda lorry which was coming on the opposite direction. A criminal case has been registered against the claimant since the evidence available indicate that it was his rash and negligent driving which has caused the accident. In the said accident, the motorcyclist died P.W.1 the claimant and R.W.1 the driver of the swaraj mazda lorry are witnesses to the accident. Both have conflict of interest. Therefore, their evidence is also contradictory to each other insofar as the negligence.

10. The rough sketch marked as Ex.P.3 indicates that the claimant while driving his Eicher van has gone to the extreme right of the road. He has crossed the lane to avoid the two wheeler. Since he has suddenly turned to right and run through wrong side, the swaraj mazda lorry driver coming from opposite direction keeping left had dashed.

11. In the said circumstances, the evidence clearly prove that the accident has occurred due to the negligence of the claimant though two other vehicles are also involved in the accident. The relief of the claimant can only be against his own insurer if he had coverage. Hence, it is appropriate to examine the evidence of R.W.3, who is the Administrative Officer of Oriental Insurance Company, which has insured the Eicher van of the claimant and the insurance policy marked as Ex.R.10 and R.11. R.W.3 in the Chief examination has stated that as far as 3rd respondent/insurance company is concerned, claimant is a not third party therefore, he cannot claim any compensation against his company. The scrutiny of policy marked as Ex.R.10 reveals that the Oriental Insurance Company has issued Motor Insurance Certificate to the claimant for his vehicle Eicher van bearing registration No.TN-49-V-0231. A sum of Rs.8,049/- has been collected towards Gross premium. It is a GCCV-PUBLIC CARRIERS OTHER THAN THREE WHEELERS PACKAGE PACKAGE POLICY – ZONE C. The period of Insurance is from 00.00 hours on 12.09.2009 to midnight of 11.09.2010. The accident occurred on 13.10.2009. Being a package policy, Ex.R.10 and Ex.R.11 filed by the 3rd respondent indicates that the 3rd respondent has collected a total sum of Rs.8,878/- inclusive of tax. Out of which Rs.100/- has been collected as additional premium under P.A cover for the owner-cum-driver. Having collected additional premium of Rs.100/- and having specifically stated in the policy that the Insurance Company is liable to pay owner-cum-driver under Section-III of P.A. cover upon to Rs.2,00,000/-. The Officer, who has deposed on behalf of the 3rd respondent has falsely stated that the Insurance premium paid does not cover the owner-cum-driver. Ex.R.11 of the policy clearly indicates that P.A cover under Section III for owner-cum-driver (CSI) limited to Rs.2,00,000/-. Additional Premium of Rs.100/- is collected from the vehicle owner for P.A cover. Therefore, this Court holds though the claimant is the tortfeasor, having paid additional premium for P.A cover he is entitled for compensation upto Rs.2,00,000/- from his insurer.

12. The disability certificate marked as Ex.P.12 indicates that he has lost the calf muscle of right leg and the fractured left tibia and fibula malunited. The doctor has certified 45% permanent disability. Ex.P.9 is the medical bills for a sum of Rs.54,597.75/- and Ex.P.14 is the bill for x-ray charges for Rs.350/-. For Transportation charges bill for Rs.2,400/- marked as Ex.P.10. Hence, this Court holds that the

3rd respondent, who is the insurer of the Eicher lorry is liable to pay under P.A cover the owner-cum-driver, who has sustained injury, in the said accident, as per the terms of policy condition under P.A. cover. The compensation is awarded as below:-

Sl. Nos.	Compensation under various Head	Award passed by this Court
1.	Permanent Disability 25% x 2000	50,000/-
2.	Medical Expenses + including x-ray charges	54,947/-
3.	Transportation Charges	2,400/-
	Total	Rs.1,07,347/-

Rounded off to Rs.1,07,400/-

13. The 3rd respondent/Insurance Company is directed to pay a sum of Rs.1,07,400/- with 7.5% interest from the date of filing the petition till the date of realisation. The said award amount shall be deposited within a period of 8 weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same on filing proper application.

14. Accordingly, the Civil Miscellaneous Appeal is partly-allowed. No costs.

Sd/-
Deputy Registrar (CS)

// True Copy //

Sub Assistant Registrar

bsm

To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Judge,
Tirupattur.

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

C.M.A.No.615 of 2017

PA(CO)
RVM(07/09/2021)