IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.771 of 2017
and
C.M.P.No.5076 of 2017

The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.25-C, Arunagiri Complex, Byepass Road,
Hosur 635 109. ....Appellant/3rd Respondent

vs

1.A.Asokan ...1st Respondent/Petitioner

2.Hari Babu Naidu

3.The Branch Manager,
The New India Assurance Co. Ltd.,
B.H.Road, Opposite to District Court, Chittor,
Andhra Pradesh,
C/o.The Divisional Manager,
The New India Assurance Co. Ltd.,
K.G.Complex, Bagalur Road,
Hosur. ...Respondents /1 & 2 Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.03.2006 made in M.A.C.T.O.P.No.27 of 2004 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Hosur.

For Appellant : Mr. M.Krishnamoorthy

For Respondents : Mr. P.Sudesh Kumar for R1
No Appearance for R3
R2-Exparte

J U D G M E N T

Heard the learned counsel for the appellant and the learned counsel for the first respondent. No representation on behalf of the third respondent inspite of adjourning the matter for the past two hearings i.e on 20.01.2021, 01.02.2021 and today (12.02.2021).

2. It is the case where the Insurance Company being aggrieved by the award amount has preferred this appeal stating that the apportionment of liability on the Appellant/Insurance Company is erroneous when the negligence of the second respondent driver insured with the third respondent was the cause for the accident. It is the case where the accident involving two vehicles. The rider of the vehicle insured under the appellant company is at no fault and also the quantum of compensation awarded is also on the excessive side.

3. The brief facts leading to the appeal is as below:

On 09.10.2003, at about 4 p.m, when the claimant on pillion in TVS Suzuki motor bike bearing Registration No. TN28 X 9969 driven by his friend Ravi travelling on Hosur to Krishnagiri road, opposite to Ameeria Petrol Bunk, a Yamaha Bike bearing Registration No.AP03 D 9793 came in the opposite direction from Hosur with high speed and knocked down TVS Suzuki Motor Bike. In the said accident, the claimant and his friend fell off from the vehicle and sustained severe injury. The TVS Suzuki motor bike also got damaged severely. The claimant who sustained severe head injury was admitted in St.John Medical College Hospital, Bangalore. He got discharged on 12.10.2003. Doctor advised him to take bed rest. As a contractor, he was earning Rs.10,000/- per month and due to hospitalization and injury, he has lost his income and also spent heavily for his medical charges. Hence, claim petition was filed against the owner of Yamaha bike and its insurer as respondents 1 and 2. The insurer of the claimant's motor bike TVS Suzuki was also added as the third respondent holding all the three respondents jointly and severally liable to pay the compensation.

4. The appellant herein filed counter wherein the liability denied on the ground that the accident took place solely due to the rash and negligent driving of the Yamaha vehicle driver insured with New India Assurance Co. Ltd. The claimant, who travelled in the TVS Suzuki motor cycle is not entitled to claim any compensation against his own insurer. The question of apportioning the liability will not arise in the present facts of the case. Being the owner of the vehicle, he cannot be the claimant against the insurance company with whom, he had entered into contract of insurance for cover of indemnity against third party claim.

5. Before the Tribunal, the claimant and Doctor who gave the disability certificate were examined as PW1 and PW2. On behalf of the respondent, two witnesses were examined. In support of the claim petition, 13 exhibits were marked. 3

exhibits were marked on the side of the respondent insurance company.

6. The Tribunal on considering the evidence placed before it held that the accident occurred due to head on collision between the two vehicles. The accident occurred due to the contributory negligence of both the vehicle riders. Therefore, the Tribunal fixed 60% negligence on the part of the Suzuki motor cycle rider and 40% on the Yamaha motor cycle rider. On considering the disability certificate and medical records, the Tribunal awarded a total sum of Rs.1,65,000/- with 9% interest from the date of petition till the date of realization. Out of which, the liability was apportioned as 40% payable by the 2nd respondent, insurer of yamaha vehicle and 60% payable by the insurer of the suzuki vehicle.

7. The learned counsel for the appellant, who is the insurer of the TVS 50 vehicle submitted that the Tribunal ought to have totally exonerated the insurer of the TVS Suzuki vehicle, since the offender was only Yamaha motor cycle rider. The FIR marked as Ex.P1 was against the Yamaha motor cycle rider and therefore, the Tribunal erred in holding the appellant liable to pay 60% of the award amount. Since the rider of the two vehicles had not come to Court to give evidence, there is no eyewitness for the accident. While so, the Tribunal on its own apportioned the liability and fixed the major liability on the part of TVS suzuki rider, contrary to the FIR being registered against the yamaha motor cycle rider.

8.The learned counsel for the appellant also submitted that the claimant being the owner of the vehicle, as its insurer, the appellant is not liable to pay the insured. The contract is only to compensate the third party claim. So the claimant is not entitled to claim compensation against his own insurer. For this purpose, the learned counsel relied upon the evidence of RW2 and Ex.R2-the insurance policy.

9. On perusal of evidence and the impugned award passed by the Tribunal, this Court finds that when the FIR is against the other vehicle and no contrary evidence is placed before this Court that rider of the TVS suzuki in which the claimant was travelling as a pillion rider also contributed for the negligence, 60% liability upon the insurer of the TVS suzuki is without any basis. Even if the Tribunal had any opinion regarding the contributory negligence due to head on collision, it ought not to have fixed higher liability on the part of the TVS Suzuki rider. Therefore, this Court modify and alter the apportionment of negligence among the two vehicle riders. When there is no adequate evidence to fix the percentage of contribution in cases of head on collision, the Supreme Court

has said that it should be taken as composite negligence when head on collision or multiple vehicles gets involved in the accident, the contribution should be equally apportioned. In tune with the said judgment, the negligence is apportioned equally among the two vehicle riders. Insofar as the extend of responsibility to indemnity, the insurer, who is none other than the claimant in view of payment of premium under personal accident cover, to the limited liability the appellant is liable to pay the claimant. In this case, the 50% of the award amount is Rs.82,500/- which is below the maximum liability agreed under the policy. Therefore, the appellant liable to compensate the claimant, insurer as per L.L. cover for P.A.

10. Yet another submission made by the learned counsel for the appellant that the Tribunal erred in awarding 9% interest is taken note of and in tune with the Supreme Court guidelines, the interest rate is reduced to 7.5%.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed reduce the contribution of the appellant to 50% from 60% and fix the liability as Rs.82,500/-. The interest for the award amount is fixed at 7.5% from the date of petition (1.3.2004) till the date of deposit. The appellant Insurance Company and the third respondent herein are directed to deposit respective share of the award amount with accrued interest 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 money on appropriate application. If any amount deposited by the appellant lay excess than the award, the appellant Insurance Company is permitted to withdraw the same. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vri

To

The Motor Accident Claims Tribunal,
Subordinate Judge,
Hosur.

Copy to

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

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.8370
+1cc to Mr.P.A.Sudesh Kumar, Advocate Sr.8523

CMA NO.771 of 2017

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srg 04/10/2021