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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.12.2021
Pronounced on : 24.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1515 of 2018

M/s.Iffco Tokio General Insurance Company Limited
Tulsi Chambers, 3rd Floor,
No.195, T.V.Swamy Road,
(W) R.S.Puram, Coimbatore-641 002.

...Appellant/2nd Respondent

Vs.

1.P.Rajendran

..1st Respondent/Petitioner

2.N.Kuppuraj

3.The Oriental Insurance Company Limited,
No.281, Cross Cut Road, 1st Floor,
Opp.to I.A.B.Photo Studio,
P.B.No.2907, Gandhipuram,
Coimbatore-641 012.

...Respondents 2 & 3/Respondents 1 & 3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.02.2017 made in M.C.O.P.No.2610 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore.

For Appellant : Mr.N. Vijayaraghavan for
M/s.M.B.Gopalan Associates
For R1 : Mr.B.Ravindran
For R2 : Ex-parte
For R3 : Mr.M.Krishnamoorthy

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 07.02.2017 made in M.C.O.P.No.2610 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore.



2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.2610 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore. The 1st respondent filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.11.2011.

3.According to 1st respondent, on 25.11.2011 at about 6.10 A.M., while he was riding his Bajaj M 80 motorcycle bearing Registration No.TN-37-V-4402 on the Velandavalam to Paladurai Road, near the Rottigoundanur pirivu keeping left side of the road from East to West direction with care and caution. At that time TVS XL heavy duty bearing Registration No.37-BR-9956 driven by the 2nd respondent came in opposite direction in a rash and negligent manner and dashed against the 1st respondent's motorcycle and caused the accident. In the accident, the 1st respondent was thrown away and sustained grievous injuries in his right leg femur and multiple injuries all over his body. Immediately he was admitted in the Rex Hospital, Coimbatore. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the TVS XL heavy duty vehicle respectively.

4.Resisting the petition, the claim of the claimant, both the Insurance Companies as well as the owner of the offending vehicle filed the respective counter affidavits inter alia disputing the manner in which the accident had taken place and the antecedents of the claimant in regard to illegal transportation of PDS rice and that there is contributory negligence on the part of the claimant who sustained injuries also.

5.Before the Tribunal, the 1st respondent examined himself as P.W.1, Doctor Mr.K.Gajendran was examined as P.W.2 and 7 documents were marked as Exs.P1 to P7. On behalf of the 2nd respondent and appellant, one V.Ravikumar was examined as R.W.1, one Tmt.Padmapriya was examined as R.W.2 and one P.R.Ramesh was examined as R.W.3 and two documents were marked as Ex.R1 and Ex.R2.

6.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the TVS XL heavy duty vehicle belonging to 2nd respondent and directed the



appellant/Insurance Company to pay a sum of Rs.1,53,000/- as compensation to the 1st respondent/claimant.

7. Against the said award dated 07.02.2017 made in M.C.O.P.No.2610 of 2012, the appellant has come out with the present appeal.

8. The learned counsel for the appellant/Insurance Company would submit that the award of the Tribunal is contrary to law and grossly erred in holding that the rider of the TVS XL heavy duty vehicle insured with the appellant was negligent in causing the accident and the claimant himself was at fault. It is further submitted that the Tribunal ought to have dismissed the claim petition by holding that the claimant himself was responsible for causing the accident and the 1st respondent is not entitled to maintain the claim petition. The learned counsel would further submit that no complaint was lodged by the claimant in regard to the accident and he had instead pleaded guilty and had paid the fine amount. The learned counsel would further submit that the 1st respondent/claimant is not entitled to dispute his own negligence and liability for the accident after having pleaded guilty before the Criminal Court and paid the fine. It is further submitted that atleast the Tribunal ought to have held the 1st respondent/claimant is guilty of contributory negligence and sought for setting aside the award passed by the Tribunal.

9. For consideration in this appeal is whether there is contributory negligence on the part of the claimant also and as such the liability can be fastened on the 3rd respondent Insurance Company?

10. The learned counsel for the 1st respondent would contend that the Tribunal after considering the oral and documentary evidence rightly awarded compensation by fixing the liability on the driver of the Bajaj M 80 motorcycle bearing Registration No.TN-37-V-4402. It is further contended that the Tribunal has rightly observed that the driver of the two wheeler though filed his counter has not participated in the enquiry and also not entered into the box to substantiate the case. The Tribunal has also rightly held in the absence of any contra evidence on the side of the 1st respondent therein held that the accident had happened due to the rash and negligent riding of the 1st respondent.



11. Heard the learned counsel for the appellant as well as the learned counsel for the respondents and perused the materials available on record.

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12. Admittedly, the complaint was given by the rider of the two wheeler namely N.Kuppuraj who is the 2nd respondent herein against the injured claimant. It is clear from the FIR that there was head on collusion between the two vehicles. It is not disputed on the side of the 1st respondent that he has pleaded guilty and paid the fine amount. On perusal of the rough sketch also, the occurrence place is noted on the South-West of the road. The injured/1st respondent has not explained what made him to go on the southern side of the road and this only led to the occurrence of the accident. In fact, by pleading guilty that due to his rash and negligent driving, the accident had taken place, he paid the fine before the Criminal Court. But, unfortunately, the Tribunal has not considered this vital aspect. Further, the 1st respondent was habitual offender in illegal transportation of PDS rice and he was also booked under Goondas Act and kept under detention. Therefore, naturally the 1st respondent would have not been careful in driving the vehicle which needs much attention and admittedly the accident was head on collusion and such being the case, it cannot be held that the driver of the offending vehicle alone was negligent and the 1st respondent has also contributed to the accident. Therefore, this Court is of the view that the liability has to be contributed at 50% both on the driver of the offending vehicle as well as on the 1st respondent and as such the 3rd respondent/Insurance Company with which the vehicle driven by the 1st respondent is liable to pay 50% of the compensation amount. Accordingly, this point is answered.

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,53,000/- together with interest and costs is hereby confirmed. The appellant-Insurance Company is directed to deposit 50% of the award amount, (i.e., Rs.76,500/-) along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.2610 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore. On such deposit, the 1st respondent is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The



appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.2610 of 2012, if the entire award amount has been already deposited by them. No costs.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gbi

To

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

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to Mr.S.Senthil Vel, Advocate sr 3839.

C.M.A.No.1515 of 2018

AD(CO)
SP(09/03/2022)