



C.M.A.No.2790 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 10.06.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2790 of 2017

and

C.M.P.No.15929 of 2017

The Oriental Insurance Company Limited,
II Floor, Parimalam Complex,
No.11, EVN Road,
Erode – 638 011.

... Appellant/4th respondent

Vs.

1.S.Velusamy

...1st Respondent/Petitioner

2.R. Velusamy

3.M. Mallika

4.M/s.National Insurance Company Limited,
No.78, Thiruvenkatasamy Chetty Street,
Erode – 638 001.

... Respondents 2 to 4/
Respondents 1 to 3



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Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 18.01.2017 in M.C.O.P.No.3 of 2014 on the file of the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Erode.

For Appellant : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

For Respondents : Mr.C.S.Saravanan for R1

Mr.D.Bhaskaran for R4

R2 and R3 – Dispensed with
vide order dated 18.09.2017

JUDGMENT

The above Civil Miscellaneous Appeal arises against the award passed in M.C.O.P.No.3 of 2014 passed by the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Erode. The 4th respondent/Insurance Company is the appellant before this Court.



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2.The 1st respondent is the claimant and the owner and rider of the Bajaj Platina motor cycle, bearing Registration No.TN 33 BC 0384.

The 2nd respondent is the driver of the Tipper lorry, bearing Registration No.TN 36 1284. The 3rd respondent is the owner of the Tipper lorry and the 4th respondent is the insurer of the tipper lorry. The 1st respondent is the owner of the motor cycle which is insured with the 4th respondent, appellant herein.

3.The facts in brief which give rise to the filing of the claim petition before the Tribunal are as follows:

The 1st respondent along with his wife were travelling in his motor cycle bearing Registration No.TN 33 BC 0348 insured with the appellant on the Kangayam to Erode Road in a careful and cautious manner. His wife is the claimant in M.C.O.P.No.739 of 2013 on the file of the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Erode. It is the case of the 1st respondent that he was riding the said motor cycle at a moderate speed and proceeding from South to



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North keeping to the left side of the road when they approached Rattaisutripalayam, a Tipper lorry bearing Registration No.TN 36 1284 belonging to the 3rd respondent and insured with the 4th respondent was driven by its driver, the 2nd respondent herein in a rash and negligent manner. The driver of the lorry was the cause of the accident.

4.The appellant/4th respondent had filed a counter *inter alia* contending that the accident even according to the claimants in their claim statement, occurred only due to the rash and negligent driving of the lorry driver and therefore, in the light of the above statement, the 1st respondent cannot be permitted to mulct the liability on the appellant and the owner of the motor cycle and it is respondents 2 to 4 herein who alone are liable to pay the said compensation. The Tribunal after considering the evidence allowed the claim petition. Aggrieved by the fact that they have been made liable to pay compensation, the appellant is before this Court.



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5.It is the contention of the counsel for the appellant that the 1st respondent has first gone to the Court with a specific case that it was the lorry which was responsible for the accident. Thereafter, for reasons best known to them, they had impleaded the owner and the insurer of the motor cycle also. He would submit that once there is a categoric admission by the claimant/petitioner, the Tribunal cannot interpret the same otherwise. He would point out that a perusal of the First Information Report would show that a case has been registered against the driver of the lorry. This would show that the lorry has been charged with negligence and the First Information Report has been registered against him. He would also submit that even in the claim statement, the claimants have pleaded negligence on the part of the driver of the lorry. In these circumstances, the finding of the Tribunal that the accident was the result of the negligence of the driver of the motor cycle is without any basis.



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6.The learned counsel for the 4th respondent/Insurance Company (the insurer of the Tipper lorry) would submit that the Tribunal has rightly come to the conclusion that it was the rider of the motor cycle who was responsible for the accident after perusing the First Information Report, MVI Reports, etc., He would therefore submit that the said finding has to be confirmed and this appeal is liable to be dismissed.

7.Heard the learned counsels appearing on either side and perused the papers.

8.Although the First Information Report had been lodged against the driver of the lorry, however, after investigation, the First Information Report has been closed as a mistake of fact. Further, the MVI Reports which have been marked as Ex.P.4 and Ex.P.5 would clearly show that there were no damages to the lorry and it was only the motor cycle that has sustained damages. This documentary evidence



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has to be considered along with oral evidence of PW1. In the oral evidence of the 1st respondent as PW1 except for stating that the lorry dashed against the motor cycle, the 1st respondent has not come forward with a categorical case that the lorry had hit against his vehicle. If the version of the 1st respondent is accepted then there must be heavy damages on the rear side of the motor cycle. However, the MVI Reports does not corroborate the same. Therefore, the finding of the Tribunal that the negligence was only with the driver of the motor cycle, namely, the 1st respondent has to be confirmed.

9.The 1st respondent being the tortfeasor cannot make a claim under Section 166 of the Motor Vehicles Act. Ex.R.1 – Policy contains a personal accident coverage for the owner /driver, however, a reading of the annexure attached to the policy in Section 3 would indicate that the said cover is applicable only for a specified injuries and that too to a total extent of Rs.1,00,000/-. The 1st respondent has not chosen to challenge the finding of the Tribunal with reference to the mulcting of



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negligence only upon the driver of the motor cycle and its insurance.

Therefore, the same has attained finality.

10. Admittedly, the petitioner has not sustained injuries covered under this Section. Therefore, the 1st respondent is also not entitled to the compensation under the head of Personal Accident. The Tribunal has failed to appreciate the above and has proceeded to pass an Award granting compensation of Rs.1,57,500/- to the 1st respondent, the tortfeasor.

In the result, this Civil Miscellaneous Appeal is allowed and the Award and Decree dated 18.01.2017 passed by the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Erode. in

M.C.O.P.No.3 of 2014, is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.



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Index : Yes/No

Internet : Yes/No

Speaking order / Non speaking order
mps

To

The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Erode.



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P.T. ASHA, J,

mps

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