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C.M.A.No.985 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.985 of 2021

And

C.M.P.No.5472 of 2021

The Branch Manager,
M/s.The IFFCO-TOKIO General
Insurance Company Limited,
Branch Office at
'Tulsi Chambers', III Floor,
No.195, T.V.Swamy Road (West),
R.S.Puram, Coimbatore.

... Appellant

Vs.

R.Venkatasamy

... Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 02.02.2019 passed in M.C.O.P.No.571 of 2017, by the Hon'ble Motor Accidents Claims Tribunal, (Court of Special Subordinate Judge), at Krishnagiri.

For Appellant : Mr.J.Michael Visuvasam
For Respondent : Mr.J.Pradeep



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J U D G M E N T

The respondent Insurance Company before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed seeking to set aside the judgment and decree dated 02.02.2019 passed by the Motor Accidents Claims Tribunal, (Court of Special Subordinate Judge), Krishnagiri, in M.C.O.P.No.571 of 2017.

2.The brief facts of the case is that on 21.09.2009, at about 6.45p.m., the respondent was proceeding in his TVS Star City motorcycle bearing Registration No.TN24-E-6505 in Krishnagiri to Hosur NH7 Road from Krishnagiri to his house at Bolupalli Village bus stop. At that time the rider of the Hero Honda motorcycle bearing Registration No.TN23-2940 came in the same direction and hit behind the respondent's motorcycle, due to which, the respondent sustained injuries.

3.Thereafter, the injured claimant/ respondent filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.1 Lakh. After adjudication, the Motor Accidents Claims Tribunal arrived at a conclusion that the respondent is entitled



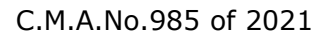
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to a sum of Rs.2,98,000/- with interest at the rate of 9% p.a. from the date of filing of the petition till the date of deposit and proportionate costs and directed the appellant Insurance Company to deposit a sum of Rs.1 Lakh along with interest. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the claimant is the owner of the motorcycle and he instead of filing claim petition as against the owner of the offending vehicle and its insurer, filed claim petition as against the appellant under Section 166 of the M.V.Act, which is not sustainable one. Though the respondent has paid premium for Personal Accident Coverage, the driver cum owner can claim compensation only in the case of death or loss of limb, however, in the present case, it is only simple injuries and hence, the claimant is not entitled to claim compensation as against the Insurance Company, however, the Tribunal without considering the same, inadvertently, passed the impugned award.

5.The learned counsel appearing for the respondent/ claimant submitted that the Tribunal after considering all the factual aspects,



6. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent and perused the materials available on record.

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8.Following the ratio laid down in the decision of this Court reported in **2021 ACJ 979 [Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu]**, the appeal is allowed. The judgment and decree dated 02.02.2019 passed by the Motor Accidents Claims Tribunal, (Court of Special Subordinate Judge), Krishnagiri, in M.C.O.P.No.571 of 2017, is set aside. The appellant Insurance Company is permitted to withdraw the entire amount already deposited by them.

9.The civil miscellaneous appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

20.12.2023

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
(Court of Special Subordinate Judge),
Krishnagiri.



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