



C.M.A.No.977 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.977 of 2016
and
Civil Miscellaneous Petition No.7450 of 2016

United India Insurance Company Ltd.,
No.134, Silingi Building,
Greens Road, Chennai – 6.

... Appellant / 2nd Respondent

Vs.

1.R. Dillibabu @ Babu

... Respondent / Claimant

2. Andirayan

... Respondent/Respondent

[R2 set ex-parte before Tribunal.
Hence notice to R2 dispense with]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.11.2014 made in M.C.O.P.No.1383 of 2011 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge No.II, Chennai.

For Appellant	:	Mr. M. J. Vijayaraghavan
For R1	:	No appearance
For R2	:	Dispensed with



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the second respondent-Insurance Company, challenging the Award passed in M.C.O.P.No.1383 of 2011, dated 03.11.2014, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge No.II, Chennai.

2. The parties are referred to hereunder according to their status and ranking before the Tribunal.

3. The case of the claimant is that on 03.07.2010 at about 21.00 hours, while he was riding his motorcycle bearing Registration No.TN 01 AA 0550 on GNT Road, opposite to Maduravoyal Lakshmi Theatre, at that time, a lorry bearing Registration No.TN 23 A 3546, which was driven by its driver ahead on the very same road with rash and negligent manner had applied sudden brake without any signal, which resulted in the motorcycle being dashed on the rear side of the lorry. In which, the petitioner sustained grievous injuries. A criminal case was also registered against the driver of the lorry in Crime No.325/GNT II/2010 on the file of the GNT Road Traffic



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Investigation Wing Police Station, under Sections 279 and 337 IPC. For the injuries sustained by the claimant filed a Claim Petition seeking compensation to the tune of Rs.6,00,000/-.

4. The first respondent therein is the owner of the lorry has not contested the case and remained ex-parte. The second respondent-Insurance Company appeared and filed counter contended that the driver of the lorry is not responsible for the accident and only the petitioner is responsible for the accident. On the date of occurrence, the lorry was not having valid insurance policy, its driver has no valid driving licence hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 examined and Exs.P1 and P6 were marked. On the side of the second respondent, R.W.1 was examined and Exs.R1 to R3 were marked.

6. Based on the evidence placed on record, the Tribunal in point No.1 has held that the driver of the lorry is responsible for the accident. In point No.2, the Tribunal has held that there is no violation of



any policy conditions. In Point No.3, the Tribunal has granted compensation for a sum of Rs.2,30,000/- with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation.

7. Aggrieved over the liability fixed on the Insurance Company to pay the compensation, this appeal has been filed.

8. The learned counsel for the Insurance Company has submitted that the accident was taken place due to the negligent act, on the part of the claimant and that the Tribunal has not properly appreciated the contents of the First Information Report, which was lodged by the claimant, which itself shows that the claimant is the tortfeasor, hence the Insurance Company is not liable to pay the compensation. It is also contended that the evidence of the claimant is contrary to the pleadings in respect of the negligence and in the absence of any supportive materials, the evidence of the claimant shall not to be considered. Hence prays to set aside the finding of the Tribunal with regard to negligence.



9. I have considered the submissions made on both sides and

also perused the materials placed on record.

10. Admittedly, before the Tribunal, the respondent has not examined any eyewitness regarding the occurrence. They have examined one of the Officials of the Insurance Company about the accident, but he is not the eyewitness to the occurrence of the accident. The evidence of P.W.1 is that on 03.07.2010 at about 21.00 hours, he was riding his two-wheeler bearing Registration No.TN 01 AA 0550 on the GNT Road, Redhills, while he reached near Maduravoyal Lakshmi Theatre, a lorry belongs to the first respondent, which was driven ahead of him, suddenly stopped the vehicle in the middle of the road, due to which, he sustained grievous injuries. In cross examination, it has been stated that the lorry driver suddenly entered in front of him without any signal and stopped the vehicle in the middle of the road. This cross examination and evidence adduced by P.W.1 shows that, while the injured was driving his vehicle suddenly the lorry came in front of him in rash and negligent manner and applied sudden brake, which resulted in caused injuries to him.



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11. It is not the case that the injured has driven the vehicle in the road without maintaining safety distance from the vehicle. It is the specific case that suddenly the lorry entered the road in rash and negligent manner in front of him and applied sudden brake, for which, the claimant cannot be held responsible for the accident and the Tribunal has rightly held that the driver of the lorry is responsible for the occurrence.

12. The learned counsel for the Insurance Company has relied on the recitals in the First Information Report, it is stated that the lorry was parked in the road without any safety precautions, which resulted in motorcycle hit on the rear side of the lorry. This FIR was not lodged the eyewitness and even if the recitals in the FIR is acceptable, it is the case of negligent parking in the middle of the road during night hours, which resulted in causing accident.

13. By examining the Official of the Insurance Company-R.W.1, they filed a copy of the Rough Sketch of the accident, which also shows that the accident was occurred on the left hand side of the road and



the two-wheeler was hit on the rear side of the lorry. There is no contra evidence produced on the side of the Insurance Company to show that the claimant was negligently driven the two-wheeler and hit on the lorry. Hence, the contention is that there is a contributory negligence on the part of the claimant and he is liable to be rejected. Similarly, the Insurance Company has not produced any document to show that there is a violation of any statutory contractual conditions. Accordingly, the appeal filed by the Insurance Company is liable to be dismissed.

14. In the result, this Civil Miscellaneous Appeal filed by the Insurance Company is dismissed. The Award and Decree passed by the Motor Accidents Claims Tribunal in M.C.O.P.No.1383 of 2011, dated 03.11.2014, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.II, Chennai, is hereby confirmed. The Appellant-Insurance Company is directed to deposit the compensation amount awarded by the Tribunal along with interest and costs within a period to six weeks from the date of receipt of a copy of this Judgment to the credit of M.C.O.P.No.1383 of 2011. On such deposit the claimant is permitted to withdraw the compensation amount awarded by the Tribunal along with



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interest and costs less the amount already withdrawn, if any. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

1. The Special Subordinate Judge-II,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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K.RAJASEKAR,J.

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