IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.123 of 2018
and
C.M.P.No.1663 of 2018

The Oriental Insurance Company Ltd.,
Office at Spencer Towers, IV Floor,
770-A, Anna Salai,
P.B.No.2447, Chennai,
Tamil Nadu – 600 002. ... Appellant

v.

1.A.Gunasekaran
2.Rooban
3.Vijayakumar ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment dated 20.12.2016 made in M.C.O.P.No.1107 of 2013 on the file of the Motor Accident Claims Tribunal (II Additional District and Sessions Court), Tiruppur.

For Appellant : M/s.Elveera Ravindran

For Respondents : No appearance

JUDGMENT

Challenging the award dated 20.12.2016 passed by the Motor Accident Claims Tribunal (II Additional District and Sessions Court), Tiruppur in M.C.O.P.No.1107 of 2013, the Insurance Company has preferred this appeal in C.M.A.No.123 of 2018.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The facts in nutshell are as follows :

On 25.07.2012 at about 9.30 a.m., the petitioner/injured claimant was riding his two wheeler (Hero Honda Splendor Plus) bearing Registration No.TN 42 C 6077 from Pethapalayam to Tiruppur Road (south to north direction). When the claimant was proceeding near Malayampalayam Pirivu, an Eicher Canter Van bearing Registration No.TN-18-B- 4893, came in the East to West direction, driven by the first respondent in a rash and negligent manner and dashed against the petitioner's two wheeler. Due to the said impact, the petitioner sustained grievous injuries. The petitioner took first aid treatment in Government Hospital, Tiruppur and then he was admitted in the Rama Krishna Hospital, Coimbatore for further treatment. Hence, he claimed a sum of Rs.10,00,000/- as compensation.

4. The appellant/Insurance Company filed their counter affidavit denying the averments and allegations made in the claim petition and prayed for dismissal of the claim petition.

5. To substantiate the case on the side of the claimant, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P15 were marked. On the side of the Insurance Company R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R4 were marked.

6. The Tribunal, after considering the oral and documentary evidence available on record, awarded a total compensation of Rs.3,60,000/-

with interest at 7.5% per annum from the date of petition and directed the respondents 1 to 3 therein to pay the compensation jointly or severally to the claimant. Subsequently, the same shall be recovered from the owner of the offending vehicle. Challenging the same, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeal.

7. The learned counsel for the appellant Insurance Company has submitted that the alleged accident took place only due to the rash and negligent driving of the petitioner. He further submitted that the vehicle bearing Registration No.TN-18-B-4893, which was involved in the said accident, was not the Eicher Canter Van and it is a TATA LPT 1109 Turbo Truck, however, the claimant has falsely named the offending vehicle as Eicher Canter Van. He further submitted that the alleged accident took place on 25.07.2012 at about 9.30 a.m, whereas First Information Report was registered only on 27.07.2012. Further, the Investigating Officer was examined as R.W.1 and he has clearly stated either the Eicher Van or the alleged vehicle bearing Registration No.TN-18-B-4893 were not seized and sent it for inspection before the Motor Vehicle Inspector. However, the

petitioner has falsely implicated the vehicle bearing Registration No.TN-18-B-4893 as Eicher Canter Van for the purpose of claiming compensation and therefore, the appellant Insurance Company is not liable to pay any compensation. He further submitted that the driver of the said offending vehicle did not possess valid driving licence, which is in violation of policy conditions.

8. Heard the learned counsel for the appellant and perused the records.

9. Despite service of notice, the respondents have not chosen to enter appearance either through a counsel or in person.

10. On a perusal of the records, it is seen that due to the accident, the claimant sustained grievous injuries and immediately admitted in the hospital, but he has not preferred any complaint, however, the pillion rider gave the complaint only after two days.

11. The main contention raised by the learned counsel for the appellant is that as per Ex.P5/Registration Certificate and Ex.P6/Copy of the Insurance Policy, the vehicle bearing Registration No.TN-18-B-4893 is a Tata LPT 1109 Turbo Truck and it is not an Eicher Canter Van, as alleged by the claimant. In the First Information Report it was wrongly mentioned as Eicher Canter Van. The brand name of the vehicle not tallied with the said registration number.

12. The question that has to be answered is whether the vehicle mentioned in the FIR and claim petition involved in the accident.

13. R.W.2, who was one of the officers of the Insurance Company, has stated that they engaged a private investigating agency to investigate the alleged accident, however, the Insurance Company has not filed any documents to show the outcome of the investigation of the private investigating agency. Though R.W.1 has stated that they could not chase the vehicle, whereas the claimant has filed Registration Certificate of the vehicle bearing Registration No.TN-18-B-4893 and a copy of the Policy

Certificate, which clearly shows that the vehicle mentioned in claim petition bearing Registration No.TN-18-B-4893 was insured with the appellant Insurance Company.

14. On a reading of the counter affidavit filed by the Insurance Company and the evidence of the appellant, wherein, no where, it is specifically pleaded or proved that the vehicle bearing Registration No.TN-18-B-4893 was not an Eicher Van not insured with the appellant Insurance Company and the same was not involved in the accident.

15. This Court as a final Court of fact finding re-appreciated the entire evidence and finds that the accident was not disputed and the vehicle which was involved in the accident was insured with the appellant Insurance Company, also not disputed. The claimant has established the foundational fact that there was a motor accident, due to which he sustained injuries. The pillion rider, who was examined as one of the witnesses also stated that the offending vehicle was involved in the accident. However, the appellant Insurance Company take a defence that the said vehicle was not

involved in the accident, which is a rebuttable presumption. The initial burden has been established by the claimant and the onus is on the appellant to prove that the vehicle mentioned in the First Information Report and the claim petition is not involved in the accident.

16. The first respondent was examined as P.W.1 and he has clearly stated that due to the rash and negligent driving of the driver of the offending vehicle, the accident had occurred and he sustained injuries. P.W.2 pillion rider of the vehicle, which was driven by the claimant has clearly stated that offending vehicle viz., Eicher Van bearing Registration No.TN-18-B- 4893 was involved in the said accident. Thus, the claimant proved his case. However, the Insurance Company did not prove contra to the evidence of P.W.2

17. It is an admitted fact that the injured was 32 years old at the time of the accident and he was working as a cutting master in a Baniyan Company. The Doctor/P.W.3 had assessed his permanent disability at 40%. The Tribunal by relying upon the evidence of P.W.3, fixed Rs.3,000/-

towards per percentage of disability and awarded a sum of **Rs.1,20,000/- [Rs.3000x40]** towards permanent disability.

18. However, on a careful reading of the evidence of the Doctor/P.W.3, it is clear that he has not given treatment or first aid to the injured soon after the accident. However, after two years from the accident only, the Doctor assessed the disability of the injured. Therefore, this Court is of the opinion that the Doctor/P.W.3, who gave disability certificate to the injured not reflected the exact disability of the injured. Hence, this Court on perusal of records fixes permanent disability of the injured claimant as 30% and therefore, the claimant is entitled to **Rs.90,000/- [Rs.3,000x30]** towards permanent disability. The amount awarded under other heads are just and fair and hence, they are confirmed.

19. Thus, the claimant is entitled to **Rs.3,30,000/-** (3,60,000 – 30,000) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. The total compensation payable to the claimant is re-calculated and tabulated below:

S. No.	***Heads under which amount is awarded by the Tribunal***	***Amount awarded by the Tribunal in Rs.***	***Amount awarded by this Court in Rs.***
1.	Permanent disability	1,20,000	90,000
2.	Pain and Sufferings	40,000	40,000
3.	Extra Nourishment	25,000	25,000
4.	Transportation	10,000	10,000
5.	Attender Charges	15,000	15,000
5.	Medical Expenses	1,20,000	1,20,000
6.	Loss of income during treatment period [Rs.6000X5]	30,000	30,000
	Total	**3,60,000**	**3,30,000**

20. Since the driver of the said offending vehicle did not possess valid driving licence, which is a violation of policy conditions, the Insurance Company shall pay the compensation amount at first instant and thereafter, recover from the owner of the vehicle.

21. In view of the above modification, the Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance Company is directed to deposit the above entire modified award amount to the credit of M.C.O.P.No.1107 of 2013 on the file of the Motor Accident Claims Tribunal (II Additional District and Sessions Court), Tiruppur along with

accrued interest and costs awarded by the Tribunal, from the date of claim 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. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the claimant in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). The claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs. Thereafter, the appellant/Insurance Company shall recover the same from the owner of the vehicle-the third respondent herein. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

25.07.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ms

To

1. The Motor Accident Claims Tribunal
   (II Additional District and Sessions Court),
   Tiruppur.

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

<u>P.VELMURUGAN, J.</u>

ms

C.M.A.No.123 of 2018

and
C.M.P.No.1663 of 2018

25.07.2023