IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

C.M.A.No.1416 of 2018
and
C.M.P.No.11338 of 2018

M/s.Iffco-Tokio General Insurance Co.Ltd.,
Branch Office,
Salem. ... Appellant

v.

1.G.Ramasamy
2.Desingurajan
3.M/s.Oriental Insurance Co., Ltd.,
Represented by its Branch Manager,
81-C, 1st Floor, KRC Complex,
Chennai Salai, Krishnagiri.
4.T.Ramasamy ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 18.01.2018 made in M.C.O.P.No.2128 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge (MACT), Krishnagiri.

For Appellant : Mr. S. Arun Kumar

For Respondents : No appearance for R1, R2 and R4
Mr.D.Bhaskaran for R3

JUDGMENT

Challenging the award dated 18.01.2018 passed in M.C.O.P.No. 2128 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge (MACT), Krishnagiri, Iffco-Tokio General Insurance Company Limited has filed the above Civil Miscellaneous Appeal.

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

3. The case of the claimant before the Tribunal is that on 30.01.2012 at about 10.00 a.m., he was proceeding to Bathlapalli near Theertham in his two wheeler viz., TVS 50 moped bearing Registration No.TN 24 L 7178 with his brother-in-law as pillion rider. When the claimant was proceeding near the house of Pudhooran, Beemandapalli in Gurubarapalli Theertham Road, a TATA ACE bearing Registration No.TN 24 F 7781, belonging to the first respondent in the claim petition and insured with the second respondent/Oriental Insurance Company Limited, came in the opposite direction in a rash and negligent manner and dashed against the two wheeler driven by him. Due to the said impact, the claimant and the pillion rider were

thrown out from the moped and sustained grievous injuries. The claimant took first aid treatment in Government Head Quarters Hospital, Krishnagiri and then he was admitted in Arun Hospital, Krishnagiri for further treatment. In connection with the accident, a case in Crime No.23 of 2012 for the offences under Sections 279 and 337 of IPC on the file of the Gurubarapalli Police Station, was registered against the driver of the TATA ACE, who is the third respondent in the claim petition. The claimant therefore filed the claim petition for the injuries sustained in the accident and claimed a sum of Rs.10,00,000/- as compensation.

4. The first respondent, who is the owner-cum-driver of the TATA Ace Vehicle and the third respondent, who is the owner of the TVS 50 moped Vehicle, remained *ex-parte* before the Tribunal.

5. Resisting the claim petition, the second respondent/Oriental Insurance Company Limited and fourth respondent/Iffco-Tokio General Insurance Company Limited filed their counter statements disputing the manner of accident, age, avocation, income of the claimant and their liability to pay the compensation.

6. To substantiate the case, on the side of the claimant, he examined himself as P.W.1 and marked Ex.P1 to Ex.P6. On the side of the respondents, R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R7 were marked and also one Court document was marked as Ex.C1.

7. The Tribunal, after considering the oral and documentary evidence available on record, awarded a total compensation of Rs.2,04,500/- with interest at 9% per annum from 04.04.2016 till the date of deposit and directed respondents 1, 3 and 4 to pay the compensation jointly and severally to the claimant. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

S.No.	***Compensation awarded by the Tribunal under the heads***	***Amount in Rs.***
1.	30% permanent disability (30% x 3000 = 90,000/-)	90,000
2.	Medical Expenses	19,000
3.	Transportation, Nutrition & Attender Charges	15,000
4.	Pain and Sufferings	30,000
5.	Loss of Amenities and Enjoyment of Life	30,000
6.	Damages to clothing and articles	1,000
7.	Partial loss of income	19,500
	Total	2,04,500

8. Challenging the same, the appellant/Iffco-Tokio General Insurance Company Limited has filed the present Civil Miscellaneous Appeal. However, neither the owner of TATA ACE nor the claimant have filed any appeal challenging the findings of the Tribunal.

9. The learned counsel for the appellant/Iffco-Tokio General Insurance Company Limited has submitted that the Tribunal, after considering the materials available on record, held that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle viz., TATA ACE. It was also held that there was no coverage of Insurance in respect of the said vehicle at the time of accident and hence, its insurer/ appellant herein cannot be made liable to pay compensation and ought to have been exonerated from paying the compensation. Though the Tribunal finds that the driver of the TATA ACE is responsible for the accident, which is owned by first respondent in the claim petition and it is not insured at the time of accident, erroneously held that the appellant herein, who is the insurer of the motor cycle is also liable to pay compensation. He further submitted that the injured claimant did not possess valid driving licence at the time of accident. Therefore, the findings of the Tribunal are perverse and the appeal

may be allowed.

10. The learned counsel for the third respondent/Oriental Insurance Company Limited has submitted that at the time of accident, the said TATA ACE was not insured with them. On 30.01.2012 at about 10.00 a.m., the accident had occurred, subsequently, on the same day i.e. 30.01.2012 at 18.15 hours, the second respondent herein insured the offending vehicle with the third respondent/Oriental Insurance Company Limited. He further submitted that, at the time of accident, the offending vehicle was not insured with any one of the Insurance Company and therefore, the owner of the offending vehicle alone is liable to pay compensation and the Tribunal also rightly awarded just and fair compensation.

11. Heard the learned counsel for the appellant and the learned counsel for the third respondent and perused the records.

12. Despite service of notice, respondents 1, 2 and 4 have not chosen to enter appearance either through counsel or in person.

13. This Court, as an appellate Court, so also, this Court being a fact-finding Court, had analysed the issue independently and re-appreciated

the evidence to render an independent finding.

14. The accident is admitted. The offending vehicle involved in the accident is also admitted. The offending vehicle was not insured with the third respondent/Insurance Company is also not in dispute. The only dispute now raised before this Court is regarding the liability of the appellant /Insurance Company fixed by the Tribunal.

15. On a perusal of the entire materials, it is seen that the accident took place only due to rash and negligent driving of the driver of the offending vehicle (TATA ACE) and not the rider of the motor cycle (TVS-50), who is the claimant. It is also seen that the offending vehicle was not insured with the third respondent and hence, the third respondent/Insurance Company was exonerated from the liability. It is also found that there was no contributory negligence on the part of the injured claimant and the accident had happened only due to the negligence on the part of the driver of the offending TATA Ace vehicle. Therefore, the appellant/insurer of the motor cycle is also not liable to pay any compensation. The owner of the offending vehicle TATA ACE is only liable to pay compensation. The previous insurance policy of TATA ACE expired on 13.12.2011 and from 14.12.2011 to till the date of accident, the offending vehicle was not insured with the third respondent or

any one of the Insurance Company. The Tribunal has therefore fixed liability on the owner of the offending vehicle and there was no contributory negligence on the part of the injured claimant and hence, the appellant/Insurance Company is not liable to pay compensation.

16. Considering the above facts and circumstances, this Court finds that there are enough materials to prove that the offending vehicle was involved in the accident and the driver, who drove the offending vehicle had only caused the accident due to his rash and negligent driving. There was no contributory negligence on the part of the injured claimant and hence, the appellant/Insurance Company is not liable to pay compensation.

17. Therefore, for the reasons stated above, this Civil Miscellaneous Appeal is allowed, by setting aside the Award of the Tribunal directing the appellant herein to pay compensation jointly and severally along with the respondents 2 and 4 herein. No costs. However, a sum of Rs.2,04,500/- along with interest at the rate of 9% was awarded by the Tribunal as compensation to the claimant, along with interest and costs, is confirmed. It is made clear that the compensation amount has to be paid only by the owner of the offending TATA Ace Vehicle. The second respondent

herein, who is the owner of the offending vehicle is directed to deposit the entire compensation amount with costs as awarded by the Tribunal to the credit of M.C.O.P.No.2128 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge (MACT), Krishnagiri, along with interest at 9% and costs as awarded by the Tribunal from 04.04.2016 till the date of deposit, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to credit the compensation amount 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 entitled to withdraw the compensation, after adjusting the amount, if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any from the amount already deposited. Consequently, connected miscellaneous petition is closed.

28.07.2023

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

1. The Motor Accidents Claims Tribunal,
   Special Sub Judge (MACT),
   Krishnagiri.

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

P.VELMURUGAN, J.

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C.M.A.No.1416 of 2018

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