IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1925 of 2018
and C.M.P.No.14850 of 2018

M/s.Tata AIG General Insurance Company Limited
Peninsula Corporate Park
Nicholas Piramal Tower, 9th Floor
Ganpatro Kadam Mark Tower
Parel, Mumbai .. Appellant

Versus

1.Arumugam

2.Sampath .. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal, Special Subordinate Court, Dharmapuri made in MCOP.No.2427 of 2014 dated 15.11.2017.

For Appellant : Mrs.C.Harini
for M/s.M.B.Gopalan Associates
For Respondents : Mr.S.C.Vishwanth for R1
Mr.V.Sakkarapani for R2

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Motor Accidents Claims Tribunal, Special Subordinate Court, Dharmapuri made in MCOP.No.2427 of 2014 dated 15.11.2017.

2.The Insurance Company is the Appellant herein seeking to challenge the award passed by the Tribunal in M.C.O.P.No.2427 of 2014 on the ground of negligence.

3. The first respondent is the claimant/injured, the second respondent is the driver of the offending vehicle. For the sake of convenience, the parties are referred to as per their ranking before the trial Court. The factum of the accident is not in dispute, however, the manner of the accident is in dispute.

4. During the trial before the Tribunal, the Claim Petitioner examined himself as PW1. Ex.P1 to P11 were marked. Ex.P1 is the FIR, Ex.P2 is the Accident Register, Ex.P6 is the Medical Bills and Ex.P11 is the disability certificate of the injured. The Tribunal on consideration of both oral and documentary evidences came to conclusion that the accident has taken place due to the carelessness of the driver of the second respondent vehicle, accordingly, fixed the negligence liability on the offending vehicle namely the vehicle insured with the appellant company. Considering the disability certificate, the Tribunal fixed the disability at 36% and granted Rs.1,08,000.

Furthermore, the Trial Court granted pain and suffering as Rs.10,000/-, loss of estate as Rs.15,000/-, transportation expenses as Rs.10,000/-, attender charges as Rs.10,000/-, loss of nutrition as Rs.10,000/-, medical bills at Rs.1,58,900 and Rs. 18,000 as loss of income, totalling to the tune of Rs.3,39,900/-.

5. After hearing the counsel for the Appellant Insurance Company and also taking note of the plea raised by the Insurance Company that the Tribunal failed to appreciate the FIR, as the first respondent/claimant was drunken during his ride and met with the accident; further, the chargesheet is also filed as against the claimant/first respondent. Therefore, the carelessness of the injured riding two wheeler on the date of accident, assumes significance. Therefore, this Court is of the considered view that contributory negligence of 25% has to be put on the head of the injured/first respondent. Accordingly, this Court comes to the conclusion that the accident has also taken place due to rash and negligence of the driver of the vehicle/injured at the ratio of 75:25. Hence, the award amount is reduced by 25% (i.e., 3,39,900 – 84,975 (25%) = 2,54,925) after taking note of the contributory negligence.

6. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above and the contributory negligence is fixed at the ratio of 75:25 among the insurance company and the claimant/first respondent. **Accordingly, the compensation awarded is reduced from Rs.3,39,900/- to Rs.2,54,925/-.** The rate of interest awarded by the Tribunal remains in tact. No Costs. Consequently, connected miscellaneous petition is closed.

(ii) the Appellant insurance company is directed to deposit the modified reduced award amount before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited and recover the same from the owner of the offending vehicle/first respondent.

(iii) On such deposit being made, the claimant is permitted to withdraw his share in the award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) If at all the Appellant Insurance Company had already deposited the awarded compensation amount, after satisfaction of the award, the Tribunal is directed to refund the surplus deposited money taking note of the reduced compensation amount herein, to the Appellant Insurance Company.

20.06.2023

Internet : Yes/No
Speaking Order/Non-Speaking Order
dhk

To

The Presiding Officer,
Motor Accidents Claims Tribunal,
Special Subordinate Court
Dharmapuri

A.A.NAKKIRAN, J.

dhk

C.M.A.No.1925 of 2018

20.06.2023