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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1053 of 2017
and
CMP.No.5172 of 2017

United India Insurance Co., Ltd.,
10A , Ranga Building,
Peramanur Main Road,
Salem-636 007. ... Appellant

..Vs..

1.Govindaraj

2.The Correspondent,
Sri Sakthi Kailash Womens College,
Military Road, Ammapet,
Salem – 636 007. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 15.07.2016 made in MCOP.No.979 of 2014 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge-I Salem).

For Appellant : Mr.C.Paranthaman

For Respondents : Mr.S.Ramprabu for R1
for Mr.S.P.Yuvaraj
No appearance for R2.

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JUDGMENT

This appeal has been filed by the appellant/Insurance Company seeking to set aside the impugned award dated 15.07.2016 in M.C.O.P.No.979 of 2014 passed by the Motor Accidents Claims Tribunal, (Special Subordinate Judge-I, Salem).

2. The facts of the case briefly are as under:

On 03.03.2014, at about 16.30 hours, the first respondent/claimant was riding his motor cycle bearing Regn.No.TN-30-AY-2058, (Bajaj Discover) on the left side of Salem to Dharmapuri Main Road. When he was proceeding opposite to Thangam Hotel, near Kamalapuram Airport, Salem, a bus bearing Regn.No.TN-33-AK-8989 going front side direction of the first respondent, in a rash and negligent manner, put sudden brake and the back side of the bus, hit the motor cycle and thereby caused the accident. Due to the said impact, the first respondent sustained grievous injuries in left hand and multiple injuries all over the body. In view of the same, the first respondent/claimant seeks compensation of Rs.10,00,000/- before the Tribunal. After trial, the claimant

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was awarded a sum of Rs.4,26,000/- as compensation, fixing contributory negligence on the Insurance Company and the claimant in the ratio of 75% : 25% and thus directing the Insurance company to deposit a sum of Rs.3,19,500/- to the claimant as compensation**.** Being aggrieved over the aforesaid award, the Insurance Company has filed the present appeal seeking for exoneration of the Insurance Company from the liability.

3. The learned counsel for the appellant would submit that the Insurance company ought to have exonerated from the liability in paying the compensation on behalf of the owner of the offending vehicle since the petition is not maintainable for non joinder of necessary parties. He further submitted that the FIR given by the wife of the claimant has been closed on 05.03.2014 in Cr.N.217 of 2014 as Mistake of Fact in the Final Report submitted by the Sub-Inspector of Police, Omalur Police Station, Salem District, after serving RC notice to the claimant herein. In the Accident Report, it is mentioned as if the claimant travelled in a two wheeler and whereas in the FIR, it is mentioned that the claimant drove the two wheeler. Therefore, there is no negligence on the part of the driver of the bus. Hence

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the appellant/Insurance Company is not liable to pay compensation. It is further submitted that the accident had taken place only due to the conduct of the claimant who rode the two wheeler without valid and effective Driving License at the time of accident. The FIR given by the claimant was closed as Mistake of Fact by the police authorities because the claimant admitted that at the time of accident, he only hit on the rear side of the bus. He further denies the avocation, age and other particulars of the injured claimant are put to strict proof.

4. In view of that the accident had occurred due to rash and negligent driving of the offending vehicle bus, the Tribunal has imposed the liability on the Insurance Company to pay compensation to the claimant. However, the compensation amount being directed to pay to the claimant by the Insurance company is not sustainable and liable to be quashed.

5. On the contrary, the learned counsel for the first respondent would submit that the driver of the bus had caused the accident. Thus the Tribunal has rightly awarded the compensation since the vehicle was insured with the

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aforesaid Insurance company at the time of the accident. Since the claimant is an agriculturist and his family members are also depending on his income, he sustained grievous injuries due the said accident, the Insurance company shall pay the compensation to the Claimant.

6. Heard both sides and perused the entire documents produced before this Court.

7. During the trial, on the side of the claimant, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.6 were marked. On the Insurance Company, R.W.1 was examined and Ex.R1 and Ex.R2 were marked.

8. On perusal of the award, it is seen that the Tribunal has fixed the liability in the ratio of 75% : 25% wherein the Insurance Company has been fixed much liability at 75% while the claimant has been fixed at 25%. It is to be noted that the claimant has hit on the rear side of the parked bus. The police authorities has closed the FIR as mistake of fact on 05.03.2014. In the event of both the parties are liable for the accident, the ratio of

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composite negligence has to be fixed in accordance with the law.

9. On perusal of the entire records, it is seen that the claimant is stated to have riding the two wheeler bearing No.Regn.No.TN-30-AY-2058, (Bajaj Discover) which is also recorded in the FIR/Ex.P1. Further, the two wheeler had hit the parked bus at his back side. But the Tribunal has confirmed that the owner of the bus has caused the accident. After considering the aforesaid all aspects, the Tribunal has fixed the liability in the ratio of 75% : 25% on the Insurance Company and the claimant respectively and it has directed the Insurance company to pay compensation to claimant a sum of Rs. 3,19,500/-

10. After considering the aforesaid fact and circumstances of the case, this court is inclined to modify the ratio of liability as 65% : 35% fixed on the Insurance company and the claimant respectively. In other words, the compensation awarded by the Tribunal is modified by changing ratio on the negligence in which 65% of the award amount shall be borne by the Insurance Company/appellant herein and the balance 35% of the award

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amount shall be borne by the first respondent herein/claimant. The appellant /Insurance Company is hereby directed to pay the 65% of award amount which works out to Rs./-2,76,900/-. together with interest @ 7.5% p.a. from the date of petition till the date of deposit, to the credit of M.C.O.P.No.979 of 2014 on the file of the Motor Accident Claims Tribunal, ((Special Subordinate Judge-I Salem) within a period of four weeks from the date of receipt of copy of the Judgment. On such deposit, the claimant herein is permitted to withdraw the compensation amount after filing a formal petition before the concerned Tribunal. Other terms of the award shall remain the same.

11. In the result, the appeal is allowed in part and the award passed by the Tribunal in M.C.O.P. No.979 of 2014 is modified accordingly. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

07.02.2023

Index:Yes/No
Internet:Yes/No
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A.A.NAKKIRAN, J.

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To

1.The Section Officer
V.R.Section, High Court of Madras.

2. The Motor Accidents Claims Tribunal
Special Subordinate Judge-I Salem.

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and
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