



C.M.A.No.2808 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

C.M.A.No.2808 of 2017

and

CMP.No.16026 of 2017

The Divisional Manager,
M/s. National Insurance Co. Ltd.,
Divisional Office, No.110, J.N. Street,
Puducherry – 605 001.

...Appellant

Vs.

1. R.Haridoss @ Karthi

2. J.Manikandan

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Decree and Judgment dated 05.01.2017 passed in M.C.O.P.No.3319 of 2015 by the Motor Accident Claims Tribunal (In the court of Special Subordinate Judge), Cuddalore.

For Appellant : Mr.J.MichaelVisuvasam

For Respondents : No Appearance, for R1
R2 –Exparte



C.M.A.No.2808 of 2017

JUDGEMENT

Challenging the Decree and Judgment dated 05.01.2017 passed in M.C.O.P.No.3319 of 2015 by the Motor Accident Claims Tribunal (In the court of Special Subordinate Judge), Cuddalore, the insurer has come up with this appeal.

2. It is the case of the appellant that, the 1st respondent/claimant filed a claim petition claiming a compensation of Rs.20,00,000/- on the ground that, on 22.05.2015 at about 12 noon, when the 1st respondent/claimant was riding the Hero Splendor Pro motorcycle bearing Regn.No.TN-31-BS-2832 owned by the 2nd respondent insured with the appellant, to allow passage for the tractor coming in the opposite direction, when the claimant moved his vehicle, the vehicle skid and the claimant fell down and sustained injuries, for which the claimant was hospitalised. Therefore, towards the injury suffered and also the loss of earning, the claimant preferred a claim petition claiming compensation. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.1,25,032/-. Aggrieved by the said order, the appellant is before this Court questioning the liability of the insurer.



C.M.A.No.2808 of 2017

3. Learned counsel for the appellant/insurance company submitted that, even according to the 1st respondent/claimant, the fall was not on account of an accident with the tractor but it was due to the skidding of the vehicle, which is a self-inflicted injury by the claimant and therefore the appellant/insurance company is not liable to pay any compensation. It is the further submission of the learned counsel that, even if at all the appellant/insurance company is to compensate the 1st respondent/claimant, it could be only in a sum of Rs.1,00,000/- in respect of death towards the cover extended to the owner of the vehicle and in the present case, the claimant having suffered only injuries would not be entitled to the entire sum of Rs.1,00,000/-. Therefore, he prays that necessary modification may be ordered in the award of the tribunal.

4. Though notice was served on the 1st respondent and his name was printed in the cause list, none appeared on his behalf. However, considering the period of pendency of this appeal, this Court is inclined to dispose of the same based on the materials available on record.



C.M.A.No.2808 of 2017

5. The factum and manner of the accident is not in dispute and the injury suffered by the 1st respondent/claimant is also not disputed. It is the only case of the appellant that there was no accident as a result of which 1st respondent/the claimant sustained injuries, but it was a self-inflicted injury on account of the fall from the motorcycle by the claimant and therefore, the appellant is not liable to pay the compensation.

6. A perusal of the materials placed on record reveal that, the 1st respondent/claimant fell down from the vehicle when he allowed passage for the movement of the tractor. Therefore, it is evident that there was no accident but it was an injury sustained by the 1st respondent on account of his own act and for which the appellant/insurance company cannot be made liable to compensate. Further, as per the terms and conditions of the policy, the appellant /insurance company is not liable to compensate for the injuries by considering the claimant as a third party, as the claimant would not fall within the ambit of third party. But necessarily, the appellant/insurance company having entered into a contract to provide personal accident cover, the injured being the driver of the vehicle would step into the shoes of the owner of the vehicle to receive claim for



C.M.A.No.2808 of 2017

personal accident relating to the owner of the vehicle. Therefore, to that extent the claimant is entitled for compensation.

7. In the case on hand, the personal accident cover to the owner of the vehicle in case of death stands at Rs.1,00,000/-. However, as the 1st respondent/ claimant having suffered only injuries, he would not be entitled to the entire compensation and considering the nature of injury suffered by the claimant, this Court is of the opinion that a sum of Rs.50,000/- towards personal accident cover to the claimant would meet the ends of justice.

8. In view of the above, the appeal is allowed in part by modifying the award passed by the tribunal from Rs.1,52,032/- to Rs.50,000/-. The appellant/ insurance company is directed to deposit the compensation awarded by this Court to the credit of M.C.O.P.No.3319 of 2015 along with the interest at 7.5% per annum from the date of claim petition till the date of deposit, less the amount, if any already deposited within a period of two weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the 1st



C.M.A.No.2808 of 2017

respondent through RTGS within a period of two (2) weeks thereafter. If any excess amount is deposited by the appellant/insurance company, they are entitled to withdraw the same by way of filing necessary application. No costs. Consequently, the connected Miscellaneous petition is closed.

17.10.2023

skt

Index : Yes / No
Speaking Order : Yes / No
NCC : Yes / No

To

- 1.TheMotor Accident Claims Tribunal
(In the court of Special Subordinate Judge), Cuddalore.
- 2.The Section Officer, V.R. Section, High Court, Madras.



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C.M.A.No.2808 of 2017

M.DHANDAPANI, J.

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