



C.M.A.No.96 of 2017

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.96 of 2017

The Oriental Insurance Company Limited.
2nd Floor, E.V.N.Road, Erode – 11.

... Appellant

Vs.

1. S.Govindaraju
2. D.S.Rajeshkumar

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1051 of 2012 dated 04.04.2016, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Dharapuram.

For Appellant : Mr.M.S.Vijaya Raghavan

For Respondents : Mr.M.R.Thangavel for R1

No Appearance for R2

JUDGEMENT

Questioning the liability fixed by the Motor Accidents Claims Tribunal, Subordinate Court, Dharapuram in M.C.O.P.No.1051 of 2012



C.M.A.No.96 of 2017

dated 04.04.2016, the appellant has preferred the present appeal.

WEB COPY

2. Brief facts which are necessary for disposal of this appeal are as follows:-

The appellant was the second respondent in M.C.O.P.No.1051 of 2012. The second respondent is aggrieved by the grant of compensation owing to the accident, which the claimant before the tribunal had suffered when he was the pillion rider in a motorcycle bearing registration No.TN 42 Y 9929 at about 5:00 a.m. on 04.06.2012. The motorcycle was driven by the first respondent before the Tribunal / the second respondent before this Court. It dashed against the median, owing to which, the claimant / the first respondent herein suffered injuries, who filed the M.C.O.P.No.1051 of 2012 seeking compensation.

3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked 12 documents viz., Ex.P.1 to Ex.P.12. On the side of the respondents, they have examined one witness viz., R.W.1 and marked 1 document viz., Ex.R.1. After adjudication, the Tribunal had allowed the petition in part and awarded a sum of Rs.2,90,830/- as



C.M.A.No.96 of 2017

compensation by fastening the entire liability as against the appellant /insurance company. Aggrieved by the same, the appellant has filed the present appeal.

4. The learned counsel appearing for the appellant submitted that, the claimant / first respondent, was not only the owner of the vehicle but also the insured and has claimed compensation from the insurance company. He further submits that a sum of Rs.50/- has been paid towards premium only for driver and the same is marked as Ex.R1, which is the policy of the insurance company. Therefore, the first respondent being a pillion rider is entitled only for a sum of Rs.1,00,000/-. However, the Tribunal has awarded a sum of Rs.2,90,830/- which is contrary to the terms of the policy and the same is wholly unsustainable.

5. The learned counsel appearing on behalf of the first respondent did not dispute the fact submitted by the learned counsel for the appellant.

6. Heard the learned counsel appearing for the appellant and the



C.M.A.No.96 of 2017

WEB COPY

learned counsel appearing on behalf of the first respondent and perused the materials available on record.

7. In view of the submissions made by the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the first respondent and on a perusal of Ex.R1, policy of the insurance company reveals that the first respondent who is the owner of the vehicle has paid a sum of Rs.50/- towards premium which is covered only for driver, in which the pillion rider is entitled only for a sum of Rs.1,00,000/-. Contrary to the terms of the policy, the Tribunal erred in awarding a sum of Rs.2,90,830/- in favour of the first respondent which is *per se* unsustainable. Hence, the appellant is directed to pay a sum of Rs.1,00,000/- in favour of the first respondent / claimant within a period of eight (8) weeks from the date of receipt of a copy of this order.

8. In the result, the appeal is allowed in part by modifying the compensation awarded by the Tribunal from Rs.2,90,830/- to Rs.1,00,000/-, payable to the first respondent / claimant with interest at the rate of 7.5% per annum from the date of the claim petition till the



C.M.A.No.96 of 2017

date of realization, along with interests and costs. In view of the deposit of compensation made by the appellant, the Tribunal is directed to transfer the amount awarded by this Court along with interests and costs directly to the bank account of the first respondent through RTGS as per apportionment of the Tribunal, within a period of two (2) weeks thereafter. Insofar as the balance amount deposited by the appellant/insurer, the appellant/insurer is permitted to withdraw the same by making appropriate application before the Tribunal. No costs.

10.10.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
rap

To

1. Motor Accidents Claims Tribunal,
Subordinate Court, Dharapuram
2. The Section Officer,
V.R. Section,
High Court, Madras.



WEB COPY



C.M.A.No.96 of 2017

M.DHANDAPANI, J.,

rap

C.M.A.No.96 of 2017

10.10.2023