IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM :

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

C.M.A.No.1901 of 2019

Subramaniam ...Appellant

Vs.

1. Suresh Kumar

2. Royal Sundaram Alliance Co. Ltd., Chennai. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and award made in M.C.O.P.No.200 of 2007 dated 30.11.2012 on the file of the Motor Accidents Claims Tribunal (II Addl. Subordinate Judge) Villupuram.

For Appellant : Mr.D.Rajasekar

For Respondents : No Appearance, for R1
: Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates, for R2

JUDGEMENT

Aggrieved by the Judgement and award passed by the Motor Accidents Claims Tribunal (II Addl. Subordinate Judge) Villupuram in M.C.O.P.No.200 of 2007 dated 30.11.2012, the claimant has come up with this Appeal.

2. The case of the appellant is that, on 22.01.2006 at about 06.00 am., when the appellant was travelling in the car bearing Regn.No.TN-32-A-6582, along with one Thirugnanam and the 1st respondent and were proceeding to Pallaripalayam village, near T.Edayar, as the lorry which was proceeding in front of the above said car suddenly applied brake without any indication, in order to avoid hitting the lorry, the appellant applied braked and the vehicle was swerved to its left, as a result of which, the vehicle dashed against the Tamarind tree, due to which, the appellant sustained grievous injuries and got admitted in the hospital. Thereby, the appellant/claimant filed a claim petition claiming a compensation of Rs.15,00,000/-. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.25,000/-. Aggrieved by the said order, the appellant had come up with this appeal seeking enhancement of the compensation fixed by the tribunal.

3. Learned counsel for the appellant submitted that, the accident had happened only due to the fault on the lorry proceeding in front of the car as the said lorry suddenly applied brake without any signal and in order to avoid a major accident, the appellant/claimant swerved the

vehicle to its left and unfortunately dashed against the tamarind tree. Even then, the appellant has not arrayed the owner and insurer of the said lorry as parties to the claim petition, since the appellant has filed claim petition seeking compensation under personal accident coverage alone, as the appellant is the driver of the vehicle and is the father of the 1st respondent/owner of the vehicle. While so, without considering any of the said facts, fault has been attributed on the claimant under no fault liability which cannot be sustained to and compensation has to be paid jointly by the respondents 1 and 2 to the claimant.

4. Per contra, the learned counsel appearing for the 2nd respondent/ insurance company submitted that, the driver of the lorry had driven the lorry in a rash and negligent manner, which had lead to the car driven by the claimant dashing against the tarmarind tree. Further, though the appellant claim that he is entitled for personal accident cover available to the owner, however, even for the said personal claim, the claimant has to satisfy certain conditions prescribed u/s 147 of the Motor Vehicles Act,1988 relating to personal accident coverage. In the present case, none of the provisions are satisfied by the apellant and they are not entitled

even for no fault liability. However, as the insurer of the vehicle has not preferrred any appeal, the same need not be interfered with. However, other than the said no fault liabilty, the insurer cannot be made liable to pay any further compensation. Accordingly, he prayed for dismissal of this appeal.

5. Heard learned counsel for the appellant and the learned counsel appearing for the 2nd respondent and perused the material documents placed on record.

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. A perusal of the impugned award reveals that, the tribunal, after appreciating the materials had given compensation under no fault liability to arrive at the said finding, the tribunal has appreciated the Ex.P1, FIR which has fixed the negligence on the part of the claimant in driving the vehicle, which has resulted in the accident. In fact, the vehicle driven by the claimant had not dashed against another vehicle,

but the claimant claims compensation at the hands of his own insurer. The car driven by the claimant is a private vehicle and therefore, the claimant cannot be construed to be a third party to claim third party insurance. The claimant will not fall under the ambit of third party nor is he the owner of the vehicle or the employee under the owner. Therefore, the claimant cannot claim any compensation under the said heads. However, the fact remains that, the 1st respondent, who is the owner of the vehicle is the son of the claimant. Therefore, for all purpose, the claimant driving the vehicle, steps into the shoes of the owner and therefore, he cannot be considered as third party for the purpose of claiming any compensation. In the absence of any additional premium being paid to cover the risks in respect of the occupants of the vehicle, no compensation can be sought for from the insurer.

7. Though the claimant claims compensation under the personal accident cover under the policy, it is to be pointed out that the personal accident cover would be applicable only when the negligence is attributable to the offending vehicle. In the case on hand, the negligence

having been fastened on the claimant, the claimant cannot claim compensation under the personal accident cover. Appreciating all the above said facts, the tribunal had rightly negatived the claim of compensation made by the claimant and the awarded compensation under Section 140 under the head no fault liability. The said finding arrived at by the tribunal is at the basis of materials and on basis of the provisions of law, which are neither perverse nor illegal and the same required to be sustained.

8. For the reasons aforesaid, the appeal stands dismissed, confirming the award passed by the tribunal in M.C.O.P.No.200 of 2007 dated 30.11.2012. The 2nd respondent-insurance company is directed to deposit the above said amount awarded by this Court to the credit of M.C.O.P.No.200 of 2007 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of two weeks (2) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to

transfer the said amount directly to the bank account of the appellant/ claimant through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal.

07.11.2023

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Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

1.The Motor Accidents Claims Tribunal (II Addl. Subordinate Judge)
Villupuram.

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

M.DHANDAPANI, J.

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