BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.158 of 2020

Vijayakumar .....Appellant/Petitioner

-vs-

1. Hubert K John

2. The United India Insurance Company Ltd,
Represented by its the Branch Manager,
Monday Market,
Neyyor Post,
Eraniel Village,
Kalkulam Taluk,
Kanyakumari District. .... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988, against the decree and judgment passed by the learned Subordinate Judge cum Motor Accidents Claims Tribunal, Padmanabhapuram in M.C.O.P.No.13 of 2016, dated 28.11.2018.

For Appellant : Mr.K.P.Narayanakumar

For Respondents : Mr. N.Dilip Kumar – for R2
: No appearance – for R1

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the claimant challenging the dismissal of the claim petition.

2. According to the claimant, he was travelling as a pillion rider in the vehicle belonging to and driven by the first respondent herein. While they were travelling in a two wheeler from Thikkanamcode to Mulagumoodu, an unknown motor vehicle had hit against the motor vehicle in which they were travelling and the injured claimant was thrown out of the vehicle and he sustained injuries. According to the claimant, the first respondent who was driving the motor cycle alone was responsible for the said accident and due to the rash and negligent driving, he hit against the other motor vehicle. Therefore, he claimed a compensation of Rs.3,00,000/- (Rupees Three Lakhs only) as against the first respondent/owner of the bike and the second respondent Insurance Company.

3. The owner of the vehicle had remained ex-parte. The second respondent viz., Insurance company had filed a counter contending that

without impleading the owner of the unknown vehicle and the Insurance Company of the said unknown vehicle, the present claim petition is not maintainable. The Insurance Company had further contended that the policy is only an Act Policy. Therefore, the claimant who was travelling in the bike as a pillion rider is not entitled to receive any compensation from the Insurance Company. The Insurance Company has also disputed the quantum of compensation prayed for by the claimant.

4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that since the claimant has not impleaded the owner of the unknown vehicle and the Insurance Company, the claim petition is not maintainable. The Tribunal further found that he is not entitled to receive any compensation from his own Insurance Company for the vehicle, in which, he had travelled. Based upon the said findings, the entire claim petition was dismissed by the Tribunal. Challenging the said award, the present appeal has been filed.

5. According to the learned counsel appearing for the claimant/appellant, it is the specific case of the injured claimant that only because of the rash and negligent driving of the first respondent, he had hit

against the another unknown vehicle. Therefore, the entire negligence is only upon the first respondent. Hence, the question of impleading the unknown vehicle or the Insurance Company, does not arise. He further contended that even assuming that it is an Act policy, the Tribunal ought to have passed an award as against the first respondent herein. Hence, he prayed for allowing the appeal and fixing the quantum of compensation.

6. Per contra, the learned counsel appearing for the Insurance Company had contended that the Policy, which is marked as Ex.R1, discloses that it is a statutory policy and does not cover the pillion rider. Therefore, for the injuries sustained by the pillion rider, the compensation cannot be prayed for from the Insurance Company of the same vehicle.

7. I have carefully considered the submissions made by the learned counsel on either side.

8. Admittedly, the injured claimant has travelled as a pillion rider in the two wheeler belonging to the first respondent. It is the specific case of the claimant that the accident has taken place only due to the rash and negligent driving of the first respondent. The vehicle driven by the first respondent had

dashed against an unknown vehicle only due to his rash and negligent driving of the first respondent. In view of the above said pleadings, the Tribunal was not right in holding that the claim petition is not maintainable, for not impleading the unknown vehicle or their Insurance Company.

9. A perusal of Ex.R1-Policy would clearly indicate that it is an Act Policy and that it does not cover a pillion rider. Therefore, the Insurance Company cannot be held liable for payment of compensation of amount for the rash and negligent driving of the first respondent, who is the driver/owner of the vehicle.

10. The claimant has not produced any Disability Certificate. The claimant has produced only the Wound Certificate under Ex.P.4, Discharge Summary under Ex.P.6, and Medical Bills Ex.P-7 and Ex.P-8. That apart, the Doctor was examined as P.W.2 who has not deposed anything about the permanent disability said to have been sustained by the injured claimant. Therefore, this Court is of the view that no amount of compensation would be awarded to the claimant under the head of loss of income.

11. As far as the Medical Expenses incurred by the injured claimant are concerned, they are reflected under Ex.P-7. It is the Medical Bills issued by the private hospital for the period covering 02.01.2015 to 06.01.2015 and the total bill amount is Rs.36,917/- (Rupees Thirty Six Thousand Nine Hundred and Seventeen only). That apart, the injured claimant had visited the hospital for further treatment in the end of January 2015 to April 2015 for treating the injuries arising out of the said accident, the total bill amount of Rs.6,006/- (Rupees Six Thousand and Six only). These two medical bills are marked as Ex.P7 and Ex.P8.

12. In view of the above said deliberations, the appellant/ injured claimant is entitled to receive a compensation amount of Rs.42,923/- (Rupees Forty Two Thousand Nine Hundred and Twenty Three only) and the said amount will carry interest at the rate of 7.5% per annum from the date of filing of the claim petition. The claim amount shall be paid by the owner of the vehicle viz., the first respondent in the claim petition.

13. Accordingly, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

03.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Subordinate Judge cum
Motor Accidents Claims Tribunal,
Padmanabhapuram.

2. The United India Insurance Company Ltd,
Represented by its the Branch Manager,
Monday Market,
Neyyor Post,
Eraniel Village,
Kalkulam Taluk,
Kanyakumari District.

3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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