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C.M.A(MD)No.677 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.02.2023

Pronounced on : 19.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.677 of 2020

K.Mohamed Jakariya

...Appellant /Petitioner

Vs.

The Branch Manager,
IFFCO TOKIO General Insurance Company Ltd.,
Door No.88, 1st Floor, “Balaji” Tower,
Thandicombu Road,
Dindigul - 624 001.

...Respondent / Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the decree and judgment in M.C.O.P.No.18 of 2018, dated 08.06.2020, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Dindigul.

For Appellant : Mr.S.Sankar

For Respondent : Mrs.K.R.Shiva Shankari



C.M.A(MD)No.677 of 2020

WEB COPY

JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.18 of 2018, dated 08.06.2020 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Dindigul. The appellant herein is the claimant and the respondent herein is the respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 24.08.2016 at 9.20 a.m. when the petitioner was riding his Hero Honda two wheeler, bearing Registration No.TN-57-AD-5231 towards Madurai – Trichy NH Road, another two wheeler TVS Heavy Duty, bearing Registration No.TN-57-F-6599 dashed against Hero Honda two wheeler. Thereby, the petitioner sustained multiple injuries. He was taken to JCB Hospital, Dindigul and he took treatment as inpatient from 24.08.2016 to 29.08.2016. He undergone surgery and a steel plate was affixed on the left shoulder bone. Subsequently, the petitioner took treatment as 'outpatient'. The petitioner was aged about 28 years. He was working as a Store Keeper and was earning Rs.15,000/- per month. The petitioner claim a sum of Rs. 1,00,000/- as compensation.



C.M.A(MD)No.677 of 2020

WEB COPY

3. Brief substance of the counter filed by the respondent is as follows:

The First Information Report was registered only against the rider of the TVS XL HD vehicle. The rider of the TVS XL HD has admitted his guilt and he paid the fine before the Criminal Court. The Claim petition was wrongly filed against the respondent. The petitioner is not a third party. The petitioner is not entitled to claim compensation from his own Insurance Company. Since the petitioner is not a third party and as the accident has happened due to rider of some other vehicle, the respondent is not liable to pay compensation.

4. One witness (1) was examined and eleven (11) documents were marked on the side of the petitioner. Two witnesses were examined and one document was marked on the side of the respondent. The Tribunal has dismissed the claim petition.

5. Against the dismissal order, the appellant has preferred this appeal on the following grounds:



C.M.A(MD)No.677 of 2020

There is a valid insurance policy and there was coverage for personal accident and the Tribunal failed to consider policy coverage and has wrongly dismissed the claim petition. The Motor Vehicle Act is the Beneficial Act and a claim should not be defeated on hyper technical issues. As per the terms of the insurance contract, the respondent is liable to pay compensation. The claim petition was filed only under 163(A) of Motor Vehicle Act. The claim of the appellant is that the accident has happened due to sudden intervention of a dog and the same was not disproved by the respondent. The appellant was injured and the vehicle was damaged. The appellant is entitled to compensation.

6.On the side of the appellant, it is stated that this petition was filed under 163(A) of Motor Vehicle Act, but the Tribunal fixed liability on the opposite vehicle and dismissed the petition on the ground of non joinder of necessary parties.

7.On the side of the respondent, it is stated that the claimant was not a the tort-feasor. It was the rider of another two wheeler, who was responsible for the accident. The First Information Report was registered against another



two wheeler. The Tribunal has given liberty to the appellant to approach the Court against the rider/owner/Insurance Company of the other vehicle and that the appellant has wrongly preferred this appeal.

8. On the side of the respondent, a judgment of this Court in the case of ***Reliance General Insurance Co.Ltd., Vs. Kovil Mani*** reported in **2021 (2) TN MAC 813** is cited, wherein, it is held as follows:-

"Accident due to negligence of offending vehicle – Bullet – FIR and charge-sheet filed against Driver of Bullet Bike – Since Bullet Bike not covered by Insurance, Claimant impleaded Owner of offending vehicle and Insurer of Bajaj Bike/Appellant as Respondent 1 & 2 – Case of Claimant that since Bajaj Bike had Insurance coverage and Personal Accident cover, Appellant liable to pay Compensation – When no FIR filed against Claimant, Claimant cannot claim Compensation from his Insurer – Claimant entitled to get Compensation only from Owner and Insurer of offending vehicle – Appellant /Insurer, held, not liable to pay Compensation to Claimant – Owner of offending vehicle, impleaded as R1, alone liable to pay Compensation – Tribunal erred in holding Appellant liable to pay Award amount – Finding of Tribunal with respect to liability of Appellant set aside."



C.M.A(MD)No.677 of 2020

WEB COPY

9.On the side of the appellant, it is stated that the claim petition was filed only under Section 163 (A) of Motor Vehicle Act and that there is no necessity for the appellant to prove the negligence.

10.A perusal of the claim petition reveals that this petition was only filed under 166 (A) of Motor Vehicle Act and not under Section 163(A) of the Motor Vehicle Act. Hence, the contention of the appellant is not sustainable. Under Section 166(A) of Motor Vehicle Act, the appellant has to prove the negligence.

11.On the side of the respondent, it is stated that the appellant cannot claim compensation, under the M.V.Act against his own Insurance Company. On the side of the appellant, it is stated that a premium was paid for personal coverage and hence, the appellant is entitled to claim compensation from his own insurance company.

12.In the above circumstances, liberty is given to the appellant to approach the proper forum against his own Insurance Company or to file a



C.M.A(MD)No.677 of 2020

fresh claim petition against the owner and Insurance Company of the TVS
Heavy Duty Vehicle bearing Registration No.TN-57-F-6599.

13. With the above directions, this Civil Miscellaneous Appeal is
disposed of. No costs.

19.04.2023

NCC : Yes / No
Index: Yes / No
Internet : Yes / No

vsd

To

- 1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Dindigul.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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C.M.A(MD)No.677 of 2020

R.THARANI, J.

vsd

Pre - Delivery Judgment made in
C.M.A(MD)No.677 of 2020

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