



C.M.A(MD)No.1135 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.09.2023

Delivered on : 29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1135 of 2014

National Insurance Company Limited,
Rep.by its Branch Manager,
Anguvilas Building,
H.P.Junction, Nagercoil,
Agasteeswaram Taluk,
Kanyakumari District.

: Appellant/3rd Respondent

Vs.

1.Raveendran

: Respondent/ Petitioner

2.Chandra Prabhar

3.Oriental Insurance Company Limited,
Rep.by its Branch Manager,
DDJ Building, 1st Floor,
Opp.Vadasery Bus Stand,
Nagercoil, Agasteeswaram Taluk,
Kanyakumari District.

: Respondents/ Respondents 1 & 2

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decretal order, dated



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08.03.2014 made in M.C.O.P.No.17 of 2012 on the file of the Motor Accidents Claims Tribunal (Special Court for Forest Offence Cases) Nagercoil.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.A.Ilango, for R3.

: No Appearance, for R1 and R2.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.17 of 2012, dated 08.03.2014 on the file of the Motor Accidents Claims Tribunal (Special Court for Forest Offence Cases) Nagercoil.

2. The appellant/insurer, who was made liable to pay compensation of Rs.1,91,192/- with interest at 7.5% per annum to the first respondent/claimant for the disability suffered by him, consequent to an accident occurred on 09.10.2011, challenged the liability mulcted on it.

3. For the sake of convenience and brevity, the parties herein after will be referred as per their status/ranking in the Tribunal.



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4. In the appeal grounds, the second respondent /insurer has raised the grounds that the accident had taken place on account of negligence on the part of the injured claimant itself; that the claimant was the owner of the vehicle and he was riding the vehicle at the time of accident and as such, the injured claimant cannot be termed to be a third party to the insurance policy and thereby disentitling the claimant to claim compensation from the third respondent and that since the injured himself was a tort-feasor, the Tribunal ought to have dismissed the claim petition as not maintainable.

5. The case of the claimant is that on 09.10.2011 at about 01.30 pm., when the claimant was riding his motorcycle bearing Registration N.TN-74-B-7140 from Enayam to Karungal and at the place Chentharai on Thengapattanam-Karungal main road, a motorcycle bearing registration No.TN-74-Q-0282, which came in the opposite direction in a rash and negligent manner, dashed against the claimant's vehicle and as a result of which, the claimant has sustained grievous injuries and was admitted in the Krishnakumar Orthopaedic Hospital and that the accident was occurred only due to the rash and negligent driving of the motorcycle rider bearing Registration No.TN-74-Q-0282.



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6. The defence of the respondents 2 and 3 is that the accident was occurred only due to the rash and negligent driving of the claimant himself and that is why, FIR came to be registered against the claimant.

7. During trial, the claimant has examined himself as P.W.1 and examined the Medical Officer as P.W.2 and exhibited 13 documents as Ex.P.1 to Ex.P.13. The first respondent/owner of the vehicle bearing Registration No.TN-74-Q-0282, had remained ex-parte. The respondents 2 and 3 insurance company of both the motorcycles have adduced neither oral nor documentary evidence.

8.The Tribunal, considering the evidence available on record, has come to a specific finding that the claimant has also contributed to the accident and that the claimant and the owner cum rider of the two wheeler bearing Registration No.TN-74-Q-0282 are equally responsible for the accident as both of them have contributed to the accident.

9. When the above matter was taken up for hearing, the learned counsel for the appellant would fairly concede that they are not challenging the finding of the Tribunal that the claimant and the first



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respondent are equally responsible for the accident. But their main grievance is that the Tribunal, after recording a decision that the claimant has also contributed to the accident, has passed the award directing the second respondent/insurer of the first respondent's vehicle and third respondent/insurer of the claimant's vehicle to pay 50% of the compensation awarded each.

10. Admittedly, the second respondent has not preferred any appeal and as such, the finding of the Tribunal directing the second respondent to pay 50% of the amount, has attained finality.

11. As already pointed out, the Tribunal, after giving a finding that the claimant himself has contributed to the accident, has committed an error in directing the claimant's insurer to pay 50% of the award amount. As rightly contended by the learned counsel for appellant, the Tribunal ought to have directed the second respondent alone to pay 50% of the award amount and erred in directing to pay 50% of the award each.

12. Considering the above, the order of the Tribunal holding that the second and third respondents are equally liable to pay 50% of the



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compensation each is not proper and is not in accordance with law and as such, the same is liable to be set aside. The appellant has not challenged the quantum of compensation awarded at by the Tribunal. Hence, this Court concludes that the above appeal is liable to be allowed and the award directing the appellant/3rd respondent to pay 50% of compensation amount is liable to be set aside. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

13. In the result, the Civil Miscellaneous Appeal is allowed and the impugned order, dated 08.03.2014 passed in M.C.O.P.No.17 of 2012 on the file of the Motor Accidents Claims Tribunal (Special Court for Forest Offence Cases) Nagercoil, directing the appellant/third respondent to pay 50% of the award amount, is set aside. Parties are directed to bear their own costs.

29.09.2023

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

- 1.The Motor Accidents Claims Tribunal
(Additional Sub Court), Thanjavur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.1135 of 2014

29.09.2023