BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.06.2023

PRONOUNCED ON : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR
C.M.A(MD)No.360 of 2018

The Branch Manager
New India Insurance Company Limited
No.3, First Floor, Main Road
Dindigul ... Appellant

vs.

1.Perumal

2.Pappuraj

3.V.Murugesan ...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgement and decree passed by the Motor Accident Claims Tribunal, Special Sub Court, Dindigul in MCOP.No.819 of 2012 dated 16.08.2017.

For Appellant : Mr.D.Sivaraman
For R1 : Mr.A.Jayaramachandran
For R2 & R 3 : No appearance

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal in MCOP.No.819 of 2012 primarily on the ground of liability.

2.According to the injured claimant, he is a 65 years old agriculturist earning a sum of Rs.12,000/-. While he was riding a TVS Super XL, a Kawasaki Bajaj bike came from the opposite direction, driven in a rash and negligent manner by the first respondent and it dashed against the TVS-XL. In the said accident, the claimant sustained grievous injuries. The said Kawasaki Bajaj bike was owned by the second respondent. The insurance company of the TVS-XL was impleaded as the third respondent.

3.The first respondent had remained exparte and the second respondent had filed a counter contending that the bajaj bike belongs to the first respondent and an F.I.R has also been registered as against the first respondent. Therefore, the second respondent is not liable to pay any compensation.

4.The third respondent who is the insurer of the TVS-XL had filed a counter contending that the accident has taken place solely due to carelessness and negligence on the part of the claimant.

5.The third respondent had filed an additional counter contending that though the policy is subsisting, the claimant cannot be considered to be a third party and therefore, claimant is not entitled to receive any compensation.

6.The insurance company has also questioned the validity of the driving licence, manner of accident and the quantum of award.

7.The Tribunal after considering the oral and documentary evidence came to a conclusion that at the time of accident, the Kawasaki Bajaj bike was owned by the second respondent and driven by the first respondent. An F.I.R was registered as against the first respondent and a charge sheet has also been filed. The first respondent had pleaded guilty and paid fine on 30.04.2012. Therefore, the Tribunal found that the second respondent alone was the owner of the vehicle at the time of the accident. The Tribunal further found that the accident has happened only due to the rash and negligent driving on the part of the driver of the

Kawasaki Bajaj bike namely the first respondent.

8.The Tribunal proceeded to fix the compensation at Rs.2,29,000/-. The Tribunal further found that the policy for the TVS-XL is subsisting on the date of the accident and the premium has been paid under the head of Owner cum Driver in the said policy. Therefore, the third respondent insurance company is liable to pay the said compensation. Challenging the said award, the present appeal has been filed by the insurance company.

9.The learned counsel for the appellant/insurance company had contended that it is the specific case of the claimant that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Kawasaki Bajaj bike. The Tribunal has also arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the first respondent. The said Kawasaki Bajaj bike is owned by the second respondent. However, the said vehicle has not been insured.

10.When the negligence has been fixed upon the first and second respondents herein, the Tribunal ought not to have mulcted the liability to satisfy the award on the third respondent. There is no contract of indemnity between the 3rd respondent and the respondents 1 and 2. In fact, the third respondent is the insurer of the vehicle in which the claimant had travelled. Hence, he prayed for exonerating the insurance company and mulcting the liability upon the respondents 1 and 2 in the claim petition.

11.Per contra, the learned counsel appearing for the claimant had contended that the policy reflects that a premium has been obtained by the insurance company for the Owner cum Driver. In the present case, the driver of the two-wheeler had sustained grievous injuries. Therefore, the insurance company is liable to pay compensation. He had further contended that the technical objections cannot be raised by the insurance company after receiving the premium amount. The policy is a package policy and therefore, the insurance company cannot now contend that their liability is restricted to the limit under personal accident coverage. Hence, he prayed for sustaining the award passed by the Tribunal.

12.I have considered the submissions made on either side and perused the materials available on record.

13.A perusal of the claim petition indicates that the claimant has taken a specific stand that the accident has taken place only due to the rash and negligent driving on the part of the first respondent who had driven the Kawasaki Bajaj two-wheeler. The F.I.R has been registered as against the said driver in Crime No.19 of 2012 on the file of the Kannivadi Police Station. A charge sheet has also been laid as against the first respondent before the Judicial Magistrate No.II in Summary Case No.442 of 2012. On 30.04.2012, the first respondent had pleaded guilty and paid the fine. That apart, the injured claimant had deposed as PW1 and he had contended that the accident has taken place only due to the rash and negligent driving on the part of the first respondent. Based upon the above said facts, the Tribunal had also recorded a finding that the first respondent alone was responsible for the said accident.

14.The first respondent had driven the vehicle which is owned by the second respondent. However, the said vehicle has not been insured. The appellant/insurance company is no way connected with the vehicle driven and owned by the respondents 1 and 2 respectively. In fact, the appellant/insurance company is the insurer of the TVS-XL in which the injured claimant was travelling. Therefore, it is clear that there is no contract of insurance between the 3rd respondent on one hand and the respondents 1 and 2 on the other hand.

15.The Tribunal had relied upon the payment of additional premium under the head of Owner Cum Driver to arrive at a finding that the insurance company is liable to pay compensation in view of the fact that the injured claimant was driving the vehicle at the relevant point of time. The liability on the insurance company to satisfy the award would arise only when there is a liability upon the owner of the TVS-XL. In the present case, the Court has not arrived at any finding that the owner of the TVS-XL was negligent in causing the accident. When there is no liability upon the owner of the TVS-XL, the question of indemnifying the said owner by their own insurance company would not arise. The payment of compensation based on the additional premium paid under the head of Owner cum Driver would arise only in cases where there is no offending vehicle or negligence is transferable to the rider of the vehicle which is insured. Just because the offending vehicle did not have any subsisting in policy at the relevant point of time, the liability to satisfy the award cannot be shifted on the insurance company in which the injured claimant had travelled.

16.In view of the above said deliberations, it is clear that the liability cannot be mulcted upon the appellant insurance company. However, under personal accident coverage, they are liable to pay compensation irrespective of the negligence of the parties. In the present case, the injured claimant had sustained 30% disability and as per contract, the insurance company is liable to pay 30,000/- out of maximum amount of Rs.1,00,000/- under the said coverage. This amount shall be paid over and above the liability fixed by the Tribunal for the injuries sustained by the claimant due to the negligence on the part of the respondents 1 and 2.

17.In view of the above said discussions, the award of the Tribunal is modified as follows:

(a).The liability of the appellant insurance company is restricted to Rs.30,000/-. The said amount shall not be deducted from the total award amount of the Tribunal.

(b).The respondents 1 and 2 in the claim petition are liable to pay the award amount of Rs.2,29,000/- to the claimant. In other respects, the award of the Tribunal is confirmed.

18.With the above observations, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

30 .06.2023

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

1.The Motor Accident Claims Tribunal,
Special Subordinate Judge, Dindigul

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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Pre-delivery order made in
C.M.A(MD)No.360 of 2018

30.06.2023