



C.M.A.(MD).No.267 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.267 of 2023

and

C.M.P.(MD).No.3204 of 2023

TATA AIG General Insurance Company Limited,
through its Branch Manager,
Rajendran Nagar,
Thirunelveli.

... Appellant

Vs.

1.Thirumalai Murugan
2.Selvaraj
3.Arokiyam

Cause title is accepted vide Court order
dated 27.01.2023 made in C.M.P.(MD).No.773/2023
in C.M.A.(MD).SR.No.69905 of 2022.

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 14th September 2022 passed in M.C.O.P.No.76 of 2017 on the file of the Additional Motor Accident Claims Tribunal and Additional Subordinate Judge of Tenkasi.

For Appellant : Mr.V.Sakthivel

For R1 to R3 : No appearance



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Aggrieved over the award passed by the Tribunal for a sum of Rs. 40,000/- for the injury sustained by the claimant, the Insurance Company has filed the present appeal. For convenience, the parties are referred to as arrayed in the claim petition.

2. The brief facts leading to the filing of this appeal are as follows:

On 11.09.2014, at about 3.15 p.m., while the claimant was riding his motorcycle bearing Registration No.TN 76 U 1962, the first respondent riding the motorcycle bearing Registration No.TN 76 K 1222 belonging to the second respondent in a rash and negligent manner and dashed against the claimant. As a result, the claimant has sustained injury and also fracture and a case was also registered against the first respondent in Crime No.199 of 2014 for the offences under Sections 279, 337 and 338 of I.P.C. Hence, the claimant has filed the petition before the Tribunal claiming compensation. The third respondent has filed a counter stating that the accident was occurred only due to the negligent driving of the first respondent.

3. Before the Tribunal, on the side of the petitioner, P.W.1 was examined and Exs.P1 to P10 were marked and on the side of the respondents, R.Ws.1 and



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2 were examined and Exs.R1 to R3 were marked.

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4. The Tribunal, on the basis of the evidence adduced and the documents filed, has come to the conclusion that the first respondent drove the motorcycle in a rash and negligent manner and dashed against the petitioner motorcycle. However, the Tribunal has directed the Insurance Company to pay a sum of Rs. 40,000/- as compensation, since the motorcycle driven by the claimant was insured with the appellant. Challenging the same, the present appeal came to be filed.

5. The learned counsel appearing for the appellant would contend that when the offending vehicle was not insured with the appellant, the direction to pay compensation by the Insurance Company is not valid in the eye of law.

6. Despite the name of the respondents printed in the cause list, none appeared for them.

7. In the light of the above submissions, now the point for consideration in this appeal is whether the Tribunal is right in directing the appellant to pay the compensation, particularly when the appellant/Insurance Company was not the insurer of the offending vehicle?



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8. From the records, it is clearly established the fact that the claimant was riding the motorcycle bearing Registration No.TN 76 U 1962 and the case of the claimant is that the accident was caused only by the first respondent, while riding the motorcycle bearing Registration No.TN 76 K 1222 in a rash and negligent manner. The Tribunal also found on the basis of the evidence that only the first respondent rode the motorcycle in a rash and negligent manner. It is relevant to note that the insurer of the motorcycle bearing Registration No.TN 76 K 1222 has not been made as a party. However, admittedly the rider of the offending vehicle did not have any valid insurance at the relevant point of time. Such being the position, the Tribunal having found that only the rider of the offending vehicle has caused the accident, the Tribunal ought not to have directed the Insurance Company to pay that amount. Admittedly, the offending vehicle has no insurance.

9. In such a view of the matter, when the negligence was entirely on the rider of the offending vehicle and the insurer of the offending vehicle was also not made as a party, the finding of the Tribunal directing the appellant to pay compensation is not sustainable in the eye of law. Accordingly, the order of the Tribunal is set aside and the compensation awarded by the Tribunal shall be paid only by the rider and the owner of the offending vehicle.



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10. With the above modification, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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akv

To

- 1.The Additional Motor Accident Claims Tribunal
and Additional Subordinate Judge,
Tenkasi.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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