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C.M.A.No.855 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2024

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.855 of 2021

and

C.M.P No.4927 of 2021

National Insurance Company Ltd.,
State Bank Road
Coimbatore.

... Appellant

..Vs..

1.K.Manikandan
2.R.Vishnuvardhan
3.V.Anuradha
4.M/s.Kum Auto Co. Pvt. Ltd
(Pre-owned car Division)
49, "A" Block, 2nd Avenue
Anna Nagar, Chennai-600 102
5.D.Ramalinga

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award and decree dated 13.12.2017 made in M.C.O.P No.98 of 2013 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge) Coimbatore.

For Appellant

: Mr.D.Bhaskaran



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For Respondents : Mr.T.Annaamalai for R1
Mr.D.R.Arunkumar for R5
R3 - Given up

J U D G M E N T

Learned counsel for the appellant is not pressing this appeal as against the third respondent. He has also made an endorsement to that effect in the Court bundle. Accordingly, this Civil Miscellaneous Appeal is dismissed as against the third respondent.

2. This Civil Miscellaneous Appeal has been filed aggrieved by the findings of the Tribunal holding that the appellant is liable to pay compensation.

3. According to the appellant, despite a categorical finding having been given by the Tribunal that the vehicle insured with the appellant is no way responsible for the cause of the accident, the Tribunal has erroneously directed the appellant along with the second respondent to pay



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compensation to the first respondent/claimant.

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4. As seen from the impugned award, it is clear that the FIR was registered only against the driver of the car owned by the third respondent. The claimant namely, the first respondent in his claim petition has himself pleaded that the driver of the vehicle owned by the third respondent is alone responsible for the cause of the accident. Despite a categorical finding having been given based on the evidence available on record that the vehicle insured with the appellant is not responsible for the cause of the accident, the Tribunal has erroneously passed an award holding that the appellant/Insurance Company is liable to pay compensation. The claimant was a rider of the motor cycle insured with the appellant and he had sustained injuries due to the negligence of the driver of the offending vehicle namely, the car owned by the third respondent and driven by the second respondent. The Tribunal in the impugned award has categorically held that the car owned by the third respondent and driven by the second respondent are alone responsible for the cause of the accident, but has misappreciated the evidence and has by mistake directed the appellant/Insurance Company,



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who is the insurer for the two wheeler liable to pay compensation along with the third respondent.

5. Necessarily, the impugned award passed against the appellant/Insurance Company suffers from perversity as only by mistake, the Tribunal has passed an award directing the appellant/Insurance Company to pay the determined compensation despite having given a categorical finding that the rider of the motorcycle insured with the appellant/Insurance Company is not responsible for the accident. Necessarily, the impugned award passed against the appellant/Insurance Company has to be set aside by this Court for the foregoing reasons. However, insofar as the compensation payable by the remaining respondents in the claim petition is concerned, this Court is of the considered view that the claim petition will have to be decided afresh in view of the fact that the fourth and fifth respondents have been impleaded as party respondents in the claim petition during the pendency of the claim petition as according to the first respondent/claimant, the fourth respondent is the dealer and the fifth respondent is the subsequent purchaser of the vehicle (car) which was



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responsible for the cause of the accident according to the claimant.

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6. Learned counsel for the fifth respondent is also present in court today.

7. No prejudice would be caused to the parties, if the claim petition is decided afresh in accordance with law and a direction issued to the Tribunal to dispose of the claim petition on remand within a stipulated time fixed by this Court.

8. In the result, for the forgoing reasons, the impugned award dated 13.12.2017 passed in M.C.O.P No.98 of 2013 against the Appellant/Insurance Company alone is set aside and this Civil Miscellaneous Appeal is partly allowed and the matter is remanded back to the very same Tribunal namely, the Motor Accident Claims Tribunal (Special Sub Judge) Coimbatore for fresh consideration on merits and in accordance with law and the respective parties are granted liberty to file additional documentary evidence in support of their respective contentions



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and after giving due consideration to the oral and documentary evidence available on record, the Tribunal is directed to pass an award within a period of four months from the date of receipt of a copy of this judgment. The appellant is removed from the array of the party respondents in the claim petition. Since the appeal is allowed insofar as the appellant is concerned, the amount deposited by the appellant before the Tribunal is allowed to be withdrawn by the appellant by filing an appropriate application. Consequently, connected Miscellaneous Petition is closed. No costs.

04.06.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-speaking order
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To

1. The Special Sub Judge/
Motor Accident Claims Tribunal
Coimbatore
2. The Section Officer
V.R. Section, High Court of Madras.

ABDUL QUDDHOSE, J.
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