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C.M.A.No.1474 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :20.07.2023

Pronounced on :30.01.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1474 of 2018

and

C.M.P.No.11684 of 2018

United India Insurance Company Ltd.,
Divisional Office,
Manjakuppam, Cuddalore.

.. Appellant

/versus/

1.Elumalai

2.Chokkalingam

.. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the award and decree dated 18.01.2017 made in M.C.O.P.No.202 of 2015 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.II), Villupuram.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mrs. R.Poornima for R1
Notice served
No appearance for R2

JUDGMENT



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This Civil Miscellaneous Appeal is filed challenging the award dated 18.01.2017 made in M.C.O.P.No.202 of 2015 by the learned Motor Accident Claims Tribunal, (Special Sub Judge-I), Villupuram.

2. The appellant is the Insurance Company, the claimant is the first respondent and the second respondent is the owner of the offending vehicle and he remained ex-parte.

3. The first respondent/claimant filed a claim petition before the Principal District Court in M.C.O.P.No. 301 of 2015 and later on, it was transferred to the Motor Accident Claims Tribunal (Special Sub Court), Villupuram and the same was taken on file and re-numbered as M.C.O.P.No.202 of 2015. After hearing the arguments on both sides, the Tribunal has awarded a sum of Rs.1,96,350/- to the claimant as compensation. Aggrieved over the same, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeal.

4. The case of the first respondent/claimant is that on 27.07.2011 at about 08.15 p.m., one Sakthivel rode the motor cycle bearing Reg.No.TN-31-AD-1396 belongs to the second respondent herein in which the first



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respondent/claimant was travelling as a pillion rider. When he was proceeded towards Thirukoilur-Asanur Main Road at Arumbakkam Village nearby junctions of Iyyanar Koil By-pass road, an unknown vehicle came behind to his vehicle in a rash and negligence manner and dashed against the vehicle of the second respondent, in which the first respondent/claimant travelling as a pillion rider. Due to the accident, the first respondent sustained fracture in his elbow and also sustained injury all over his body and due to which, he was admitted in the hospital as in-patient and took treatment. Before the Principal District Court, he filed the claim petition claiming a sum of Rs.5,00,000/- as compensation.

5. The case of the appellant/insurance company is that the claimant himself admitted that the accident had not occurred only due to the rash and negligent driving of the two wheeler rider namely the deceased Sakthivel.

6. Before the claims Tribunal, on the side of the first respondent/claimant, the claimant himself was examined as PW-1 and 9 documents were marked as Exs.P1 to P9 and besides one Court document was marked as Ex.C1. On the side of the respondents, no oral and documentary evidence was produced.



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7. The Tribunal, after considering the oral and documentary evidence and that the rider of the two wheeler was also contributed his negligence and the claimant is only a pillion rider and that the appellant is the insurer of the second respondent vehicle and also the claimant was referred to the Medical Board and the Medical Board, after examining the claimant, produced disability certificate, which was marked as Ex.C1, has awarded a sum of Rs. 1,96,350/-. Challenging the same, the Insurance Company/appellant is filed the present appeal.

8. The learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal failed to note that the claim petition was filed under Section 166 of the Motor Vehicle Act and the claimant has to prove that the driver was negligent in driving the vehicle which resulted in accident. However, the Tribunal also failed to take note of the case held by the Hon'ble Supreme Court in *Meen Variyal* that the proof of negligence is necessary and the Insurance Company cannot be made automatically liable.

9. The learned counsel appearing for the appellant/Insurance Company submitted that it is the case of “hit and run” and the claimant sustained injuries due to rash and negligent driving of the driver of unknown



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vehicle. The First Information Report was lodged as against the driver of the unknown share auto. The Tribunal also failed to consider that the Tort-feasor vehicle was unknown vehicle. Therefore, the claimant can claim compensation only from the solatium fund provided under the Act and at the most the claimant is entitled to get a sum of Rs.25,000/- under 'no fault liability' in view of the judgment of the Hon'ble Supreme Court in *A.Sridhar case*. The Tribunal also failed to consider the recital in the First Information Report and in the claim petition and also the chief examination of the claimant. It is not the case of the claimant that the accident had occurred only due to rash and negligent driving of the driver of the two wheeler belongs to the second respondent bearing Reg.No.TN 31 AD 1396. The claimant himself admitted that the accident occurred only due to rash and negligent driving of the unknown vehicle. Therefore, the findings given by the Tribunal that the appellant is liable to pay the compensation as insurer of the two wheeler in which the insured was travelling as pillion rider.

10. The learned counsel appearing for the first respondent/claimant submitted that though in the First Information Report, it is stated that the case was registered against the unknown driver of the unknown shareauto, the fact



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remains that at the time of the accident, the vehicle of the second respondent was rode by the deceased Sakthivel in which the first respondent was travelling as a pillion rider and though initially he has stated that the accident had occurred due to rash and negligent driving of the unknown shareauto driver, in the evidence of the claimant, he has stated that the rider of the two wheeler of the second respondent also held responsible for the accident and the said vehicle was insured with the appellant. Since the claimant is the pillion rider, the vehicle of the second respondent was insured with the appellant, it is not only the act policy, but it is also covered to the pillion rider. Therefore, the Tribunal has rightly held that the appellant, who is the insurer of the two wheeler is held liable to pay the compensation and the Tribunal, after considering the nature of injury sustained by the first respondent/claimant and Ex.C1-disability certificate issued by the Medical Board, awarded just compensation and there is no reason to interfere with the award passed by the Tribunal and the appeal is liable to be dismissed.

11. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and also perused the materials available on record.



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12. Admittedly, on 27.07.2011, the claimant met with the accident and due to that accident, he sustained injuries and he was admitted in the hospital and taken treatment as in-patient. Subsequently, he was examined by the Medical Board and the Medical Board has issued Disability Certificate (Ex.C1). As far as the liability of the appellant/Insurance Company is concerned, even though the learned counsel appearing for the appellant/Insurance Company vehemently contended that as per the First Information Report and the claim petition and also the chief examination of the claimant, the accident had occurred only due to rash and negligent driving of the driver of the unknown share-auto and not by the deceased Sakthivel, who rode the vehicle of the second respondent bearing Reg.No.TN 31 AD 1396.

13. On reading of the entire evidence of the claimant, it reveals that the deceased Sakthivel, who rode the above said motor cycle belongs to the second respondent also contributed the negligence and therefore, the said vehicle was also insured with the appellant/Insurance Company. But, the claimant is only the pillion rider. Once the rider of the above said offending vehicle is contributed the negligence, the Insurance also covers the pillion rider. Therefore, the appellant is liable to pay the compensation.



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14. On the side of the respondents, no oral and documentary evidence was produced. Therefore, this Court as the appeal Court while re-appreciating the evidence finds that the finding of the Tribunal regarding liability is not perverse and therefore, this Court has no reason to interfere with the finding of the Tribunal regarding liability. Therefore, this Court also finds that the accident is not in dispute and the claimant sustained injury is also not in dispute and further the investigation in this case has not traced out the person, who caused hit and run. However, the evidence of the claimant clearly shows that the rider of the vehicle of the second respondent also a cause for the accident and therefore, this Court is not interfered with the findings of the Tribunal.

15. As far as the quantum of compensation is concerned, the first respondent is not vehemently disputed the same. However, the claimant, who has appeared before the Medical Board for examination and the Medical Board examined the first respondent/claimant and issued disability certificate (Ex.C1). Therefore, considering the age of the first respondent and the injury sustained by him and the disability suffered by him and also the medical expenses incurred by him, the Tribunal has rightly awarded the compensation, which reflects as just and fair compensation and therefore, this Court does not find any



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reason to interfere with the findings of the Tribunal. This Court being the first appellate Court as the final Court of fact finding while re-appreciating the evidence does not find any reason to interfere with the award passed by the Tribunal and the award passed by the Tribunal is hereby confirmed.

16. As a result, *this Civil Miscellaneous Appeal is dismissed*. The award and decree dated 18.01.2017 made in M.C.O.P.No.202 of 2015 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.II), Villupuram is hereby confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

30.01.2024

Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

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To:

The Motor Accident Claims Tribunal,
(Special Sub Court-I), Villupuram.

P.VELMURUGAN. J.,

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Pre-delivery judgment made in

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