



C.M.A.No.1820 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.1820 of 2022

and

C.M.P.No.13081 of 2022

Bharti Axa General Insurance Company Ltd,
Divya Trade Centre, 1st Floor,
No:11, Perlands, Salem 16.

... Appellant

Vs.

1. Sadasivam
2. Venkatacalam

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree made in M.C.O.P.No.1358 of 2015 dated 08.06.2018 on the file of Motor Accident Claims Tribunal (Special Sub-Judge No.2), Salem.

For Appellant : M/S.K.Poomalai

For R1 & R2 : No appearance



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JUDGEMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the fixation of liability awarded by the Motor Accident Claims Tribunal in M.C.O.P.No.1358 of 2015 dated 08.06.2018.

2. On 15.01.2015, at about 2.00 p.m., when the first respondent/claimant was riding a two-wheeler bearing Reg.No.TN-30 AX-3475, he was hit by a two-wheeler bearing Reg.No.TN-52U-5662, which came behind the first respondent's two wheeler, and due to the said accident, the injured had sustained grievous injuries all over his body. Therefore, the claimant made a claim petition before the Tribunal, claiming a compensation of Rs.7,00,000/-.

3. On consideration of oral and documentary evidence, the Tribunal awarded a sum of Rs.5,00,791/- towards compensation. Questioning the same, the appellant/Insurance Company has filed the present appeal.



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4. The learned counsel for the appellant/Insurance Company would submit that the rider of the two-wheeler, all of a sudden took left hand side, due to which, the rider of the vehicle, who followed the vehicle behind, hit the two wheeler, by which, the first respondent/injured was unable to balance the vehicle and fell down. Further, the learned counsel contended that since the first respondent himself invited the accident, the FIR was filed in Crime No.28/15 against the rider of the two wheeler/injured and laid the charge sheet against him.

5. Though the notice has been served on the respondents and their name were also printed in the cause list, none appeared on behalf of the respondents.

6. I have given due consideration to the submission made by the learned counsel for the appellant and perused the materials available on record.

7. The main grievance of the appellant is with regard to fixation of the liability against the rider of the two-wheeler insured with the



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appellant/Insurance Company. Though the appellant has raised the issue of negligence on the part of the injured/rider of the two wheeler, in order to substantiate the said submission, the appellant has not taken any steps to examine the rider of the insured vehicle. On the other hand, the injured was examined and deposed that due to rash and negligent driving on the part of the rider of the other two wheeler bearing Reg.No.TN-52U-5662, the accident had occurred. That apart, FIR and charge sheet were also filed against the injured, however, ultimately after the trial, the injured was acquitted. All these aspects would establish that the accident had occurred due to rash and negligence on the part of the rider of the vehicle viz. Reg.No.TN-52U-5662. Therefore, this Court does not find any infirmity in fixing the liability on the part of the rider of the insured vehicle by the Tribunal. Accordingly, there is no scope to interfere with the award passed by the Tribunal. In such view of the matter, this appeal is liable to be dismissed.

8. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the award amount as determined by the Tribunal along with interest and costs, less the amount



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already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the bank account of the claimant, as determined by the Tribunal, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimant or application for withdrawal from the claimant, whichever is later. No costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2024

Index : Yes / No
NCC : Yes / No
jd

To

1. The Motor Accident Claims Tribunal,
Special Sub Judge No.2, Salem.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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Krishnan Ramasamy,J.,

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