IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.691 of 2018
and
C.M.P.No.5991 of 2018

Tata AIG General Insurance Company Limited,
Jaya Enclave, 3rd Floor, No.1057,
Avinashi Road, Coimbatore. ... Appellant

Vs.

1.M.Abimannan @ Sathish
2.K.Murugan (Driver of the car)
3.K.Palani (Owner of the car)
4.G.David ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 08.11.2017 in M.C.O.P.No.2977 of 2013 on the file of the Motor Accident Claims Tribunal (Court of Special Sub-Judge), Krishnagiri.

For Appellant	:	Mr.K.Vinod
For R1	:	Mr.T.Nirmaleswar
For R2	:	Mr.P.M.Jayachandran

For R3 and R4 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is preferred against the judgment and decree dated 08.11.2017 in M.C.O.P.No.2977 of 2013 on the file of the Motor Accident Claims Tribunal (Court of Special Sub-Judge), Krishnagiri (hereinafter referred to as "the Tribunal" for brevity).

2.Brief facts of the case are as follows :

On 02.05.2012 at about 05.30 p.m., when the 1st respondent, who is admittedly the borrower of the two wheeler (Bajaj Discover) bearing Reg.No.TN-24-K-4146, belonging to the 4th respondent and insured with the appellant Insurance Company, was proceeding from Vaniyambadi to Kandhikuppam Village in Bargur-Kandhikuppam Road, slowly and carefully on the extreme left side of the road, near BRG Madepalli Mariyamman Temple, an Ambassdar Car bearing Reg.No.TN-24-B-9537, owned by the 3rd respondent and driven by the 2nd respondent, came in the opposite direction in a rash and negligent manner and dashed the 1st respondent. Due to the said impact, the 1st respondent sustained grievous injuries. The Kandikuppam Police registered a case against the 2nd respondent/driver of the Car in Crime No.131 of 2012 under Section 279 and 337 IPC. Thereafter, the 1st respondent filed a claim petition in M.C.O.P.No.2977 of 2013 before the Tribunal for compensation of Rs.7,00,000/- under various heads.

3.Before the Tribunal, the 1st respondent/claimant examined himself as P.W.1 and marked Exs.P1 to P10. On the side of the respondents, an official of the appellant Insurance Company was examined as R.W.1 and Ex.R1 was marked. The Disability Certificate issued by the Medical Board was marked as Ex.C1.

4.The Tribunal, on considering the oral and documentary evidence on either side, by judgment and decree dated 08.11.2017, awarded a sum of Rs.1,91,000/- with interest at the rate of 9% from the date of claim petition, and directed the appellant Insurance Company to pay the award amount and recover the same from the respondents 2 and 3.

5.Challenging the liability fastened on the appellant Insurance Company, the present Civil Miscellaneous Appeal is filed.

6.Learned counsel for the appellant Insurance company submitted that, admittedly, the claimant is the borrower of the two wheeler from the 4th respondent. The learned counsel would submit that the two wheeler insured with the appellant Insurance Company, which was driven by the claimant, was not at all involved in the accident. The two wheeler was in fact dashed by the Ambassador Car driven by the 2nd respondent and owned by the 3rd respondent. The learned counsel further submitted that the FIR is also registered as against the 2nd respondent, driver of the Car. However, the entire liability has been fastened as against the appellant Insurance Company, which is impermissible. The learned counsel would submit that the Tribunal, having found that the accident was caused by the Car driven by the 2nd respondent and owned by the 3rd respondent, ought not to have fastened the liability on the appellant who is the insurer of the two wheeler and directed them to recover the amount from the respondents 2 and 3, especially when there is no contract between the appellant Insurance Company and the respondents 2 and 3. Hence, the learned counsel prays for allowing this Civil Miscellaneous Appeal.

7.Learned counsel appearing for the contesting respondents did not dispute the fact that the claimant is the borrower of the two-wheeler from the 4th respondent which was insured with the appellant Insurance Company. However, the learned counsel submitted that, since the respondents 2 and 3 did not possess valid Insurance for the Ambassador Car at the time of accident, the Tribunal directed the appellant Insurance Company to pay the entire compensation and thereafter, recover the same from the respondents 2 and 3, which finding does not warrant interference. Therefore, the learned counsel pray for dismissal of this Appeal.

8.Heard the learned counsel for the appellant Insurance Company and the learned counsel appearing for the respondents and perused the materials available on record.

9.It is admitted that the accident was solely due to the negligence of the 2nd respondent/driver of the Car. The FIR also is registered as against the driver of the Car. When the Tribunal has specifically held that the accident was caused due to the negligence of the driver of the Car, the Tribunal ought not to have fastened the liability on the appellant Insurance Company, which is the insurer of the two wheeler which is admittedly driven by the 1st respondent claimant not at all involved in the accident and ordered recovery from the respondents 2 and 3, particularly when there is no contract between the appellant Insurance Company and the respondents 2 and 3. If at all there is a contract between the appellant Insurance Company and the owner of the two wheeler/4th respondent, when admittedly the fault is not on the part of the driver of the two wheeler, but solely on the driver of the Car, the finding of the Tribunal fastening the liability on the appellant Insurance Company, is unsustainable.

10.Therefore, this Civil Miscellaneous Appeal is allowed and the finding of the Tribunal directing the appellant Insurance Company to pay the award amount and thereafter, recover the same from the respondents 2 and 3, is set aside. However, the Award of the Tribunal remains unaltered in all other aspects. Liberty is granted to the 1st respondent/claimant to recover the amount awarded by the Tribunal from the respondents 2 and 3, in the manner known to law. The appellant Insurance Company is permitted to withdraw the entire amount already deposited with interest, if any, on making proper and necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

08.11.2024

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Internet : Yes
Index : Yes / No
Speaking order / Non-Speaking order
Neutral Citation : Yes / No

To

The Motor Accident Claims Tribunal
(Court of Special Sub-Judge),
Krishnagiri.

M. DHANDAPANI, J.

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