IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA Nos.1644 & 1645 of 2022
and CMP Nos.12259 & 12262 of 2022

TATA AIG General Insurance Company Limited
2nd Floor, Srivari Shopping Mall
Near ARR Multiplex Theatre
Meyanur Road, Salem – 636 004. ..Appellant in both CMAs

.vs.

1.Madaiyan

2.Raja ..Respondents in CMA No.1644 of 2022

1.Eswaran

2.Raja ..Respondents in CMA No.1645 of 2022

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Award dated 02.02.2022 made in MCOP Nos.806 and 807 of 2019, on the file of Motor Accident Claims Tribunal, Special Subordinate Court, (MACT), Dharmapuri.

In both C.M.As

For Appellant : Mr.K.Vinod

For Respondents : Mr.M.Selvam for R1

JUDGMENT

The Insurance Company aggrieved by the Award passed by the Motor Accident Claims Tribunal, Special Subordinate Court (MACT), Dharmapuri in MCOP Nos.806 & 807 of 2019, dated 02.02.2022, have filed these appeals before this Court.

2.The 1st respondent in each of these appeals were travelling triples in a two wheeler driven by one Harish at Dharmapuri-Palakode Road on 13.06.2019. When the vehicle approached Pulikarai at about 11.30 hours, the said Harish drove the vehicle in a rash and negligent manner and all of a sudden he applied brakes and as a result, he lost the balance and the claimants sustained injuries. It is under these circumstances, the claimants filed independent claim petition before the Tribunal in MCOP Nos.806 & 807 of 2019 seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the two wheeler was driven by the said Harish in a rash and negligent manner and as a result, the accident had taken place in this case. Having rendered such a finding, the Tribunal fixed the total compensation in the case of the claimant in CMA No.1644 of 2022 at Rs.2,41,772/-.

Insofar as the claimant relating to CMA No.1645 of 2022, the Tribunal fixed the total compensation at Rs.2,64,381/-. The above compensation was directed to be paid with interest at the rate of 7.5% per annum. Aggrieved by the same, the Insurance Company has preferred these appeals before this Court.

4.Heard Mr.K.Vinod, learned counsel appearing on behalf of the appellant, Mr.M.Selvam, learned counsel appearing on behalf of the 1st respondent.

5.This Court has carefully considered the submissions made on either side and also the materials available on record.

6.The learned counsel for the appellant Insurance Company submitted that it is an admitted case where, apart from the rider Harish, two persons were travelling in the vehicle as pillion riders. That apart, there was no offending vehicle in this case and the rider of the two wheeler had driven the vehicle in a rash and negligent manner resulting in accident. To top it up, the rider of the vehicle also did not possess any valid driving license. Under such circumstances, it was contended that there is no question of mulcting the Insurance Company with the payment of compensation and to recover the same from the owner of the vehicle.

7.As an alternative submission, the learned counsel for the Insurance company submitted that as per the terms and conditions of the policy, the Insurance Company is liable to pay compensation only for one pillion rider and whereas, in this case, there were two pillion riders. Therefore, at the best, the compensation can be directed to be paid only to one pillion rider.

8.To substantiate the above submission, the learned counsel relied upon the judgment of this Court in ***Branch Manager, National Insurance Co. Ltd., vs. Kuil and others*** reported in ***2020 ACJ 2789***.

9.Per contra, the learned counsel appearing on behalf of the 1st respondent in both the appeals submitted that the Tribunal has fixed a very meagre amount as compensation and hence, the same should not be interfered. It was further contended that the Insurance Company can always recover this compensation from the owner of the vehicle and therefore, no loss will be sustained by the Insurance Company and the Insurance Company will not be prejudiced if the compensation amount fixed by the Tribunal is paid along with interest to both the claimants.

10.The case in hand involves a rider of the motor vehicle riding the vehicle without a valid driving license. That apart, apart from the rider, there were two pillion riders in the vehicle. There was no offending vehicle involved and the negligence was only on the rider of the vehicle. Hence, the accident was a result of their own making on the part of the rider and two pillion riders who travelled in the same two wheeler. If the Tribunal had fixed an exorbitant amount as compensation, this Court would have interfered with the same and would have relieved the Insurance Company from payment of compensation. However, this Court finds that the compensation fixed by the Tribunal is meagre and therefore, this Court is not inclined to take such an extreme step in this case.

11.Having held so, the Insurance Company cannot be made to pay the compensation for more than one pillion rider. The law on this issue is too well settled. Relying upon the judgment of the Apex Court in ***Oriental Insurance Co., Ltd., vs. Sudhakaran*** reported in ***2008 ACJ 2045***, it has been consistently held that the compensation is not liable to be paid for those who travelled in the vehicle beyond the seating capacity of the vehicle. The Apex Court in the above judgement has indicated that while choosing the person to whom the compensation must be paid, it must come in the descending order and the person to whom the highest compensation has to be paid must first be covered. This judgement was also relied upon in ***Branch Manager, National Insurance Co. Ltd., vs. Kuil and others*** reported in ***2020 ACJ 2789***.

12.In the light of the above discussion, the appellant Insurance Company is liable to pay the compensation only insofar as the claimant in CMA No.1645 of

2022. It is also made clear that on such payment, it can be recovered from the owner of the vehicle as held by the Tribunal. Insofar as the compensation that was fixed for the claimant in CMA No.1644 of 2022, the liability cannot be mulcted against the Insurance Company and at the best, the said claimant can only make the claim from the owner of the vehicle.

13.In the result, the Award of the Tribunal insofar as CMA No.1644 of 2022 is concerned, is set aside and consequently, CMA No.1644 of 2022 is allowed and CMA No.1645 of 2022 is disposed of in the following terms. Insofar as the claim in CMA No.1645 of 2022, the appellant insurance company is directed to deposit the compensation amount of Rs.2,64,381, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No Costs. Consequently, connected miscellaneous petitions are closed.

18.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accident Claims Tribunal,
Special Subordinate Court, (MACT), Dharmapuri.

N. ANAND VENKATESH., J

ssr

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