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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1138 of 2023

M/s.United India Insurance Co.,Ltd,
No.104-A, Peramanur Main Road
Peramanur, Salem-7. ..Appellant

.vs.

1.S.Arivalagan

2.R.Venkataraman ..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.02.2021 made in M.C.O.P.No.366 of 2019, on the file of the Motor Accident Claims Tribunal (Special Sub Court No.2), Salem.

For Appellants : Mr.D.Bhaskaran

For Respondents : No appearance for R1

JUDGMENT

The Insurance Company has filed the present appeal questioning their liability, against the award passed by the Motor Accident Claims Tribunal (Special Sub Court No.2), Salem, in M.C.O.P.No.366 of 2019, dated 10.02.2021.

2.The 1st respondent is the claimant in this case. The case of the claimant is that on 22.09.2017 he was travelling in a two wheeler as a pillion rider and this two wheeler was driven by one Madappan at Dharmapuri-Kundalampatti service road. At about 7.30 hours, the offending vehicle which was a Car was driven in a rash and negligent manner and it was also coming in the same direction and it dashed on the two wheeler as a result of which the claimant sustained serious injuries whereby there was a fracture on his left leg below the knee. An FIR came to be registered in Crime No.247 of 2017 against the driver of the offending vehicle. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. Having rendered such a finding, the Tribunal proceeded to fix the total compensation of Rs.3,57,760/- and directed the same to be paid with interest at the rate of 7.5% p.a.

4.The insurance company questioning the negligence and the liability that was fastened against the insurance company, have filed the present appeal before this Court.

5.Heard Mr.D.Bhaskaran, learned counsel for the appellant – Insurance Company. The 1st respondent has been served with notice and the name has also been printed in the cause list. There is no appearance either in person or through counsel.

6.This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also gone through the award passed by the Tribunal.

7.The question of negligence can be decided only by carefully going through the evidence of PW.1, RW.1 and RW.2. The evidence of these witnesses must be considered along with Ex.X-1 which was the closure report that was filed in this case and which was marked through RW.2

8.The specific case of the claimant as per the claim petition is that he was riding in the two wheeler as a pillion rider and the offending vehicle came from the same direction and it hit the two wheeler. The accident in this case took place on 22.09.2017 and whereas the FIR [Ex.P.1] was registered on 09.10.2017 which is after nearly 16 days after the accident. In the FIR, the complainant has reiterated the same version which was stated in the claim petition as if, the Car came in the same direction and it dashed on the rear portion of the two wheeler.

9.The FIR that was registered based on the complaint given by the rider of the vehicle was investigated by RW.2 and in the course of investigation, it came to light that the rider of the two wheeler was engaged in a phone call and he did not notice the Car coming in the same direction and all of a sudden he turned to the left side as a result of which, the front portion of the two wheeler dashed on the Car and the accident had taken place. In view of the same, the investigation officer came to a conclusion that the negligence is only on the part of the rider of the vehicle.

10.RW.2 in his evidence has specifically stated that as per the report of the motor vehicle inspector, damage was found only in the front portion of the two wheeler and that the rider of the two wheeler did not have a valid driving license. This evidence on the part of RW.2 has not been discredited in the cross examination. This fact becomes very important since there is a delay of nearly 16 days in giving the complaint against the offending vehicle. Therefore, one cannot rule out the fact that there was some deliberation to fix the offending vehicle since the injured found that the rider of the two wheeler in which he was travelling as a pillion rider did not possess a valid driving license. Apart from that, the two wheeler was also not covered with insurance policy.

11.The driver of the Car which was the offending vehicle was examined as RW.1. He has spoken about the manner in which the accident had taken place. He states that the rider of the two wheeler after speaking in his mobile phone all of a sudden turned the bike and dashed on the right side of the Car.

12.In order to counter the above evidence given by RW.1, the least that was expected on the side of the claimant was to have called the rider of the two wheeler as a witness in order to speak about the manner in which the accident had taken place. In the absence of the same, the evidence of RW.1 is not discredited. The evidence of RW.1 further substantiates the closure report filed by the police, wherein it was concluded by the investigation officer [RW.2] that the negligence was only on the part of the rider of the two wheeler.

13.The Tribunal while dealing with this issue was swayed by the fact that just because a closure report was filed by the police, that by itself will not determine the negligence in this case. There is no doubt that the conclusion arrived at by the police is not a conclusive proof and at the best, it can have a persuasive value while appreciating the evidence. The Tribunal has stated in the award as if there is a huge discrepancy regarding the evidence of RW.1 and

RW.2. On carefully going through the evidence of RW.1 and RW.2, this Court does not find any big discrepancy and the evidence of both these witnesses are on the same lines. The Tribunal has faulted the insurance company for not examining any independent witness in this case. However, the Tribunal failed to note the fact that the best person who could have spoken about this accident was the rider of the two wheeler who for reasons best known, opted to remain out of the case.

14.In the light of the above discussion, this Court has no hesitation to hold that the accident had taken place only due to the negligence on the part of the rider of the two wheeler. This finding is arrived at by applying the test of preponderance of probabilities. The reasons are that the rider of the two wheeler was not examined as a witness in this case; there was an exorbitant delay of 16 days in giving the complaint; the evidence of RW.2 shows that the rider of the two wheeler did not have a valid driving license and the two wheeler also did not have insurance coverage; the evidence of RW.2 shows that the damage to the two wheeler was completely on the front side of the two wheeler and therefore, the version given by the claimant as if the offending vehicle dashed on the rear side of the two wheeler becomes improbable; and the closure report that was filed by the police on completion of investigation by finding that the negligence is only on the part of the rider of the two wheeler.

15.In the result, this Court holds that the negligence was only on the part of the rider of the two wheeler and not on the part of the driver of the Car and therefore, there is no question of fastening the liability on the insurance company. Accordingly, the award passed by the Tribunal in M.C.O.P.No.366 of 2019, dated 10.02.2021, on the file of the Motor Accident Claims Tribunal (Special Sub Court No.2), Salem, is hereby set aside and this civil miscellaneous appeal stands allowed. If any amount has been deposited by the appellant insurance company, the same shall be permitted to be withdrawn with accrued interest. No costs.

02.07.2024

Index : Yes/No

Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To

Motor Accident Claims Tribunal
(Special Sub Court No.2)
Salem.

N. ANAND VENKATESH., J

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