



C.M.A.No.3819 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Civil Miscellaneous Appeal No.3819 of 2019

CMP.No.21909 of 2019

M/s.United India Insurance Co.Ltd.,
2/21, Perumal Konar Complex
Sengappa Konar Street, Sundarapuram
Coimbatore District.

... Appellant

Vs.

1.S.Sundar Singh

2.K.Viswanathan

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.09.2017 made in MCOP. No.743 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Judge) Coimbatore.

For Appellant : M/s.I.Malar

For Respondents : Mr.A.Sivaji for R1
R2 – Notice Dispense with vide
order dated 08.11.2024.

JUDGMENT

This appeal has been filed seeking to quash the judgment and decree dated 16.09.2017 made in MCOP. No.743 of 2013 on the file of



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the Motor Accident Claims Tribunal (Special Sub Court) Coimbatore questioning the quantum and liability.

2. It is the case of the appellant that on 20.01.2012 at about 06.30 pm., the claimant was riding his TVS appachi motor cycle (un registered) subsequently registered as Reg.No.TN 37 CA 3120 along with one Sadyan as pillion rider and proceeding near Ranganathapuram to Kannampalayam road, in front of Rajshree mills, from south to north, with utmost care and caution. At that time, the motorcycle bearing Reg.No. TN 37 AR 0609 driven by the 2nd respondent came in the opposite direction in a rash and negligent manner and without adhering to the traffic rules and regulations, dashed against the claimant's vehicle. Due to the said impact, the claimant sustained head injuries. Immediately, he was taken to RVS Hospital, Sulur for first aid and then, he was shifted to Kovai Medical Centre and Hospital, Coimabtoe and admitted as inpatient. Under these circumstances, the claimant filed claim petition in M.C.O.P.No.743 of 2013 claiming a sum of Rs.5,00,000/- as compensation.

3. During trial, in order to prove the case, on the side of the claimant, three witnesses were examined viz., PW1, PW2 and PW3 and



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marked 15 documents viz., Exs.P1 to P15, On the side of the Insurance company, one witness was examined as RW1 and two documents were marked as Ex.R1 and Ex.R2 and one document viz., Ex.C.1 was marked as Court document. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.1,81,519/- as compensation to the claimant and directed the appellant/Insurance Company to pay the compensation to the claimant. Aggrieved by the said award, the appellant/Insurance Company has filed this appeal before this Court .

4. Learned counsel for the appellant/Insurance Company submitted that the accident had occurred due to the negligence on the part of the claimant on his own fault. The Tribunal had wrongly shifted the burden on the appellant. It is also informed to this Court that the pillion rider who traveled with the claimant in this appeal had filed a separate claim petition before the very same Tribunal in MCOP.No.753 of 2013 by impleading the respondents 1 and 2 herein and their respective insurance companies. After trial, the Tribunal held against the first respondent/claimant herein had caused the accident due to rash and negligent driving and the Tribunal found that the owner of the offending



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vehicle/claimant herein is liable to pay the compensation. The offending vehicle is insured with the 4th respondent therein at the time of accident, hence, the owner of the vehicle and the insurance company are jointly and severally liable to pay the compensation to the claimant in MCOP.No.753 of 2013. Moreover, the claimant without impleading the insurance company of the two wheeler with whom it was insured, the claimant inadvertently filed the claim petition by adding the offended vehicle owner and its insurer as a party to the proceedings.

5. Learned counsel further submitted that the FIR, charge sheet and Rough Sketch registered as against the first respondent/claimant was adjudicated in another MCOP.No.753/2013 and the learned Special Subordinate Judge, Coimabtoe vide order dated 21.08.2017 alleged that the 3rd respondent is the cause for the accident and hence, directed the owner of the offending vehicle/3rd respondent the 4th respondent/Shri Ram General Insurance Co.Ltd therein, to pay the compensation jointly and severally to the claimant therein. However, the very same Special Sub Judge, Coimbatore, in the present impugned order in MCOP.No.743 of 2013 vide order dated 16.09.2017 held against the



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appellant/Insurance Company and the 2nd respondent is not sustainable one, the same needs interference by this Court.

6. Learned counsel for the claimant/first respondent submitted that the Tribunal based on the oral and documentary evidence comes to the conclusion that the claimant is entitled for compensation to the tune of Rs.1,81,519/-, the same does not warrant interference by this Court. Hence, he prays for dismissal of the appeal.

7. Heard the learned counsel for the appellant/insurance company and the learned counsel for the first respondent/claimant and perused the materials available on record.

8. The main contention of the appellant / insurance company is that the Claimant was solely responsible for the accident and the accident had occurred on account of the mistake committed by the claimant. To fortify this contention, the appellant drew the attention of this Court to the FIR that was registered against the claimant in Crime No.50 of 2012 by the Sulur Police Station and the name of the claimant was also found place in the charge sheet. Moreover, one Sadaiyan, who travelled along with the claimant herein had filed M.C.O.P.No.753 of 2013 on the file of the Motor Accident Claims Tribunal, Coimbatore, arraying the claimant



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herein as the 1st respondent therein. On analysis of the evidence and facts, the Tribunal held that the accident had occurred due to rash and negligent driving of the claimant herein, who was responsible for the accident and directed the Insurance Company, with which the vehicle of the claimant herein was insured to pay compensation.

9. The Tribunal, having held in the claim petition filed by the Pillion Rider on one hand that the accident had occurred on the fault of the claimant herein, fastening the liability on the claimant, cannot take a different stand on the other hand in the claim petition filed by the claimant himself, holding that the driver of the offending vehicle / R2 herein did not have a valid licence. Though the claimant was a party to the connected MCOP NO.753 of 2013, he remained absent and he had not chosen to file any counter in the said petition and thereby, there was no stand urged before the Tribunal in respect of not holding a valid licence by the 2nd respondent herein. Since the claimant himself was a tort-feasor and responsible for the accident, that too, after inviting an adverse order in the connected matter, the claim petition filed by him cannot stand in the eye of law. This Court finds no reason to take a



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contrary view to hold that the 2nd respondent was responsible for the accident, in the absence of any evidence to that effect. Hence, this Court is of the view that the appeal filed by the insurance company is liable to be allowed.

10. Accordingly, this Civil Miscellaneous Appeal is allowed and the judgment and decree in M.C.O.P.No.743 of 2013 dated 16.09.2017 passed by the Motor Accident Claims Tribunal (Special Sub Court), Coimbatore is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

27.11.2024

msv
Speaking Judgment/Non-speaking Judgment
Index : Yes/No
Neutral citation: Yes/No

To
Motor Accident Claims Tribunal (Special Sub Court) Coimbatore.



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M.DHANDAPANI.,J

msv

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