BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD).No.882 of 2012

The Branch Manager,
Royal Sundaram Alliance Insurance Company Limited,
No.46, Whites Road,
Chennai- 14. ... Appellant

Vs

1. Vellathurai

2. Porchelvan

3. New India Insurance Company Limited,
Tiruppathur. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the fair and decreetal order dated 22.12.2011 made in MCOP.No.383 of 2005, on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Tenkasi.

For Appellant	:	Mr. S.Srinivasaraghavan
For R1	:	No Appearance
For R2	:	Mr.E.Murugan
For R3	:	Mr.G.Prabhurajadurai

JUDGMENT

The instant appeal has been filed challenging the finding on liability.

2.The first respondent/claimant filed the claim petition stating that while he was riding his two wheeler, the offending vehicle, namely the Maxi Cab Van insured with the third respondent herein, had suddenly applied brake, as a result of which, he lost control and dashed the Maxi Cab Van from behind and fell off the vehicle, which caused grievous injuries to him.

3.The third respondent herein filed a counter affidavit stating that the accident took place only because of the rash and negligent riding of the claimant; that he had dashed against the stationary van and therefore, they are not liable to pay the compensation.

4.The insurer of the two wheeler, namely the appellant herein filed a counter affidavit stating that they are not liable to pay the compensation.

since the accident took place only due to the negligence of the offending vehicle, namely the Maxi Cab Van and prayed for dismissal of the claim petition before the Tribunal.

5.The claimant examined himself as Ex.P.W.1, the Doctor as P.W.2 and marked Ex.P1 to Ex.P11. Neither the appellant nor the third respondent had examined witnesses or marked any documents.

6.The Tribunal, after taking into consideration the oral documentary evidence, held that the accident took place both due to the driver of the Maxi Cab Van and the claimant and apportioned contributory negligence at 50% each and determined the compensation of Rs.1,98,000/-. However, in the operative portion of the award, the Tribunal had directed only the appellant to pay a sum of Rs.99,000/-, which is 50% of the compensation amount.

7.The learned Counsel for the appellant submitted that from the compensation payable, the Tribunal ought to have directed the third respondent/insurer of the Maxi Cab Van to pay 50% of the compensation amount; that the appellant was not liable to pay any compensation as the insurer himself was a tortfeasor; that the direction of the Tribunal even to pay personal accident coverage is not in accordance with law since the claimant had not established that he had suffered any permanent disability and prayed for allowing the appeal.

8.The learned Counsel for the third respondent fairly submitted that the third respondent would at best be liable to pay 50% of the compensation amount determined by the Tribunal.

9.Though notice was served on the first respondent, none has entered appearance.

10.The point for consideration in the instant appeal is whether the finding on liability by the Tribunal is justified.

11.On perusal of the evidence of the claimant/P.W.1 and the other evidence on record, it is clear that the accident took place both due to the rash and negligent driving of the Maxi Cab Van and the negligence of the rider. The claimant/rider ought to have been careful and he had contributed to the accident. The finding of the tribunal fixing 50% contributory negligence on the claimant cannot be faulted. Further there is no challenge to the said finding. The Tribunal ought to have directed the third respondent, who is the insurer of the Maxi Cab Van to pay 50% of the compensation amount. Therefore, this Court is of the view that out of the compensation of Rs.1,98,000/-, the third respondent/Insurance Company would be liable to pay a sum of Rs.99,000/-.

12.As regards the remaining 50%, the appellant/the insurer of the claimant who is a tortfeasor to that extent, the appellant would not be liable to compensate. However, the claimant would be entitled to claim benefit of personal accident coverage from the appellant provided the other conditions in the contract of insurance have been fulfilled. This Court is of the view that in the absence of any evidence to show that the first respondent has suffered any permanent disability the said benefit also cannot be extended to the claimant. It is open to the claimant to approach the appellant as per the terms of the contract of insurance in the manner known to law, if he is or otherwise eligible to claim the benefit of the personal accident coverage.

13.Therefore, this Court is of the view that the impugned award is liable to be modified. Accordingly, this civil miscellaneous appeal is allowed with a direction to the third respondent to deposit a sum of Rs. 99,000/- with interest at 7.5% per annum within a period of four weeks, from the date of receipt of a copy of this order. On such deposit, the claimant shall be permitted to withdraw the same by filing a suitable application. No costs.

14.It is reported that the appellant has already deposited a sum of Rs.99,000/-. The appellant is permitted to withdraw the same by filing a suitable application.

04.09.2024

Index : yes / No
Internet : yes / No
LR

To

The Motor Accident Claims Tribunal
(Principal Sub Court),
Tenkasi.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

SUNDER MOHAN, J.

LR

C.M.A.(MD).No.882 of 2012

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