



C.M.A.(MD) No.291 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.291 of 2013

and

M.P.(MD)No.1 of 2013

New India Assurance Co. Ltd.,
Through its Branch Manager.

... Appellant

Vs.

1.G.P.Anbumurugan,
2.P.Baskar

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.11.2008 passed in MACOP No.139 of 2003 on the file of the Motor Accidents Claims Tribunal (Additional District & Sessions Judge) (Fast Track Court-I), Madurai.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Dispensed with

J U D G M E N T

The instant appeal has been filed challenging the finding on



C.M.A.(MD) No.291 of 2013

negligence.

WEB COPY

2. The first respondent filed a claim petition stating that while he was travelling in a two-wheeler as a pillion rider, which was ridden by the second respondent, a dog crossed the road, as a result of which he lost his balance fell down and sustained injuries.

3. The second respondent/owner of the vehicle remained *ex parte* before the Tribunal.

4. The appellant filed a counter stating that the claimant is not entitled to the compensation and hence, prayed for setting aside the award of the Tribunal.

5. Before the Tribunal, the first respondent examined himself as P.W.1 and marked Exs.P1 to P8. The appellant neither examined any witnesses nor marked any documents.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the



C.M.A.(MD) No.291 of 2013

negligence of the rider of the two-wheeler and hence, the appellant, as an insurer of the said two-wheeler, is liable to pay the compensation.

7. The learned counsel for the appellant/Insurance Company submitted that the claimant, being a brother of the owner of the vehicle/second respondent herein, is not entitled to the compensation as a third party against the second respondent herein and therefore, the appellant is not liable to pay the compensation.

8. The notice has not been sent to the first respondent and the second respondent remained *ex parte* before the Tribunal. In view of the orders this Court proposes to pass, notice to the respondents 1 and 2 is dispensed with.

9. The only point for consideration in the instant appeal is '*whether the appellant is liable to pay the compensation?*'

10. The first respondent had examined himself as P.W.1 and stated about the manner of the accident. The version of the first respondent corroborated the averments in the FIR and the Final Report filed by the



C.M.A.(MD) No.291 of 2013

Police in Ex.P2. The appellant has not produced any contra evidence. In the light of the evidence on record, it is established that the accident took place only due to the negligence of the rider of the two-wheeler. It is also an admitted fact that the policy is a comprehensive policy and therefore, the appellant, as an insurer, is to be liable to pay the compensation for the injury caused to the pillion rider. The point is answered accordingly.

11. The learned counsel for the appellant/Insurance Company is unable to point out any infirmity in the quantum of compensation and hence, the award of the Tribunal is confirmed.

12. The appellant/Insurance Company shall deposit the compensation of Rs.35,308/- (Rupees Thirty Five Thousand Three Hundred and Eight only) with accrued interest at 7.5% p.a., from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

13. On such deposit, the first respondent/claimant is entitled to



C.M.A.(MD) No.291 of 2013

withdraw the compensation amount together with proportionate interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.

14. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.09.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:
1.The Motor Accidents Claims Tribunal
(Additional District & Sessions Judge) (Fast Track Court-I),
Madurai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD) No.291 of 2013

SUNDER MOHAN, J.

apd

C.M.A.(MD) No.291 of 2013

11.09.2024