BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)Nos.1774 & 1775 of 2024
and
C.M.P(MD)Nos.10125 & 10126 of 2024

The Manager,
United India Insurance Company Limited,
D.No.3-E, Bala Vinayagar ovil Street,
Thoothukudi Town,
Thoothukudi District. ...Petitioner in both the CRPs.

Vs.

Gopalraja (Died)

1. Suriyakala
2. Shanmugaraj
3. Prem Kumar
4. Santhanamariappan ... Respondent in both the CRPs

COMMON PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to call for the records of Fair and Decreetal order, dated 03.11.2023 passed in I.A.Nos.1 & 2 of 2021 in M.C.O.P. No.239 of 2007 on the file of the Principal subordinate Court, Srivilliputhur and set aside the same by allowing this Civil Revision Petition.

For Petitioner : Mr.I. Suthakaran

For Respondents : Mr.Y. Prakash, for R-1
Mr.T. Indrachithu, for R-2
No appearance – R-3 & R-4

COMMON ORDER

The issue involved in both Civil Revision Petitions are arising out of the claim filed in M.C.O.P. No.239 of 2007 and hence the following Common order is passed.

2. These Civil Revision Petitions are filed by the Insurance Company to set aside the Fair and Decreetal order, dated 03.11.2023 passed in I.A.Nos.1 & 2 of 2021 in M.C.O.P. No.239 of 2007 on the file of the Principal Sub Court, Srivilliputhur.

3. The claim petition in M.C.O.P. No.239 of 2017 was filed by one Gopalraja for the accident occurred on 18.01.2007. The claimant has sustained grievous injuries. In the said accident TVS 50 and Hero Honda vehicles were involved. The offending vehicle is Hero Honda and the 3rd respondent herein is owner of the Hero Honda and the 2nd respondent is driver of the Hero Honda.

The injured had travelled in TVS 50 as pillion rider. The accident had occurred when the Hero Honda was coming behind TVS 50 and hit the pillion rider who got grievous injuries. The Insurance Company had entered appearance by filing vakalat through Advocate but failed to file counter and subsequently failed to appear. Hence the Insurance Company was set exparte in the year 2008. Thereafter, the Gopalraja/claimant died in the year 20.02.2010. Thereafter, the claim petition was dismissed for default and it was restored in the year 2013. The deceased claimant's daughter was impleaded as legal heir/claimant. Even after restoration in the year 2013, the Insurance company had not appeared before the Tribunal and remained exparte. In the meanwhile, the claimant had filed E.P. No.108 of 2018. Thereafter, the Insurance Company had filed I.A. No. 1 of 2021 under Section 5 of Limitation Act to condone the delay of 1472 days for filing a petition to set aside the exparte decree. And I.A. No.2 of 2023 was filed under Order 9 Rule 13 of Civil Procedure Code to set aside the exparte decree dated 29.07.2017 and to restore the MCOP petition on file. The Court below has dismissed both the petitions. Aggrieved over the same, the Insurance Company is before this Court.

4. It is seen from the records that the accident had occurred in the year 2007, subsequently the claimant died in the year 2010, until now the

claimant and the legal heirs did not receive the compensation. Therefore, this Court is of the considered opinion that, if the case is remitted back to the Tribunal the family of the deceased claimant would be prejudice and serious injustice would be caused to them. Therefore, this Court proceeds to hear the case on merits.

5. It is seen that the Tribunal had fixed negligence on the Hero Honda vehicle and subsequently has held TVS 50 is also liable to pay compensation. The Learned Counsel appearing for the Insurance Company vehemently contended that when the negligence is fixed on the Hero Honda vehicle and when the Hero Honda vehicle is not insured with the Appellant Insurance Company, then they cannot be made liable to pay compensation.

6. It is seen the Hero Honda vehicle was coming behind the TVS 50 vehicle and had hit the TVS 50, wherein the pillion rider and the driver of the TVS 50 fell down, had grievous injury. It is seen that no other offending vehicle was coming from the opposite direction. In such circumstances, the TVS 50 vehicle also would have contributed to the accident and hence, both the vehicles should be held liable. Infact the Tribunal had rightly made the TVS 50 vehicle also liable. Therefore, this Court is fixing lability on the TVS 50 owner

as 20% and on the owner of Hero Honda as 30% and the Insurance Company is liable to pay 50%. The claimant had left the claim petition for default from the period from 2010 to 2013, hence the claimants are not entitled any interest portion for the said period.

7. Accordingly, the award amount of Rs.2,55,816.85/- granted by the Tribunal by Order, dated 29.07.2017 in M.C.O.P. No.239 of 2007 on the file of the Principal Sub Court, Srivilliputhur, is hereby confirmed. The Insurance company had already deposited the entire compensation. Since this Court is fixing lability 20% on the owner of the TVS 50/4th respondent herein and 30% on the owner of the Hero Honda/3rd respondent herein and 50% on the Insurance Company, the Insurance Company is permitted to recover 20% and 30% award amount granted by the Tribunal from the 3rd and 4th respondents herein. The present order is passed based on the above facts alone, hence the present order cannot be referred or relied on as precedent. The claimant is permitted to withdraw the said amount, as per Law. The Insurance Company is entitled for waiver of interest for a period from 2010 to 2013.

8. With these observations and directions, these Civil Revision Petitions are disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

18.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
KSA

To

1. The Principal subordinate Court, Srivilliputhur.

2. The Section Officer,

   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.

S.SRIMATHY, J.

KSA

Common Order made in
C.R.P(MD)Nos.1774 & 1775 of 2024

18.10.2024