



C.M.A.(MD)No.1087 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **R.VIJAYAKUMAR**

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and

C.M.P.(MD)Nos.11121 of 2018 and 4750 of 2019

The Divisional Manager,
United India Insurance Company Limited,
7-A, West Veli Street, 2nd Floor,
Madurai.

... Appellant

vs.

1.S.Pandi
2.P.Eswari
3.A.Majorkhan

4.The Manager,
M/s.National Insurance Company Limited,
Door No.HIG-315, 80 Feet Road,
Anna Nagar, Madurai – 20.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree, dated 07.07.2018 made in M.C.O.P.No.933 of 2014 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court), Madurai.



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For Appellant :Mr.I.Suthakaran
For R1 :Mr.N.Durairaj
For R2 and R3 :No Appearance
For R4 :Ms.P.Malini

JUDGMENT

The instant appeal has been filed by the United Insurance Company Limited challenging the award of compensation in M.C.O.P.No.933 of 2014 on the file of the Motor Accidents Claims Tribunal, Madurai, primarily on the ground of liability.

2.According to the injured claimant, he was travelled as a pillion rider in a two wheeler owned by one A.Majorkhan and driven by a minor, by name, Malayalam. Another two wheeler owned by the first respondent in the claim petition and insured with the fourth respondent had dashed against the vehicle in which the claimant was travelling and he had sustained injuries and he prayed for a compensation of Rs.3,00,000/-.

3.The appellant Insurance Company had filed a counter contending that the accident had taken place only due to the negligence on the part of the rider of the two wheeler, who was a minor at the relevant point of



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time and therefore, they are not liable for any compensation.

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4.The Tribunal, after considering the evidence on either side, has arrived at a finding that the accident has taken place only due to the rash and negligence on the part of the driver, namely, Sangee and has proceed to mulct the liability upon the appellant Insurance Company and has fixed the compensation of Rs.2,15,000/-.

5.According to the learned Counsel appearing for the appellant, the injured claimant has travelled as a pillion rider in a vehicle, which was driven by a minor and three persons have travelled in that two wheeler and therefore, only the rider of the two wheeler is responsible for the said accident.

6.*Per contra*, the learned Counsel appearing for the claimant heavily relied upon the deposition of ocular witness and contended that the claimant has pleaded and established the fact that the accident has taken place only due to the negligence on the part of the driver of the first respondent.



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7.The learned Counsel appearing for the fourth respondent, namely, the National Insurance Company had contended that the policy on the date of the accident had expired and therefore, they are not liable to pay any compensation.

8.I have carefully considered the submissions made on either side and perused the material records.

9.This Court had an opportunity to consider another appeal filed by the same Insurance Company arising out of the same accident in M.C.O.P.No.619 of 2014 on the file of the Motors Accidents Claims Tribunal, Madurai. After considering the evidence on either side, this Court had arrived at a finding that the liability could be apportioned between both the vehicles at 70% on the two wheeler owned by the first respondent, namely, P.Eswari and 30% on the owner of the two wheeler in which the injured claimant had travelled, namely, A.Major Khan. This Court is inclined to follow the said award, since it arises out of the same accident.



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10.In view of the aforesaid facts, the quantum of award passed by the Tribunal is hereby confirmed and the liability of the appellant/Insurance Company is restricted to 70% and the balance 30% shall be paid by the third respondent in the claim petition, namely, A.Major Khan. On all other aspects, the award of the Tribunal stands confirmed.

11.The Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

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

29.07.2024

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To

The Special Subordinate Judge,
Motor Accidents Claims Tribunal, Madurai.



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R.VIJAYAKUMAR, J.

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