IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.508 of 2015

United India Insurance Co.,Ltd.,
Divisional Office-1,
104/A, Peramanur Main Road,
Salem-7. ... Appellant/2nd Respondent

Vs.

1.Govindan
2.Amudha
3.Subramanian
4.National Insurance co.,Ltd.,
Divisional Office-II,
11, Ramakrishna Road,
Salem-7. ... Respondents/Petitioner & Respondents 1,3 & 4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed by the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem in M.C.O.P.No.322 of 2012 dated 08.10.2014 for awarding compensation.

For Appellant : Mr.D.Baskaran

JUDGMENT

This appeal has been preferred by the Insurance Company, questioning the liability as well as the quantum of Rs.4,07,000/- awarded to the first respondent, who sustained injuries in the accident occurred on 12.01.2012.

2. Mr.D.Baskaran, learned counsel appearing for the appellant would submit that the third respondent's vehicle was parked on the road without any indicator in the early morning and therefore, the vehicle insured with the appellant/Insurance Company rammed the vehicle insured with the fourth respondent. He would rely upon the evidence of P.W.1's who admitted that the vehicle was parked without any indicator. However, the award would reveal that Ex.P.1-FIR was filed against the driver of the insured vehicle/ second respondent; P.W.1 who sustained injuries spoke that the appellant's vehicle alone

dashed against the vehicle belonging to the third respondent. As far as , P.W.1 evidence is concerned, there is no rebuttal evidence on the side of the respondent. Therefore, P.W.1 evidence has to be believed and it was rightly done by the Tribunal

3. A perusal of the counter statement filed by the appellant would reveal that no indicator exhibited by the vehicle insured with the 4th respondent/Insurance Company was pleaded. In the absence of any plea, regarding the non exhibition of indicator while the third respondent vehicle was parked, it is not open to the appellant to make such a plea before this Court. Therefore, the findings given by the Tribunal that the driver of the vehicle insured with the appellant/Insurance Company alone caused the accident is based on the evidence and the same cannot be interfered with.

4. The learned counsel for the appellant very strenuously argued that 40% disability was determined by the Tribunal and there is no evidence to show that there was loss of earning at 40% disability. The first respondent/claimant at the time of accident was aged about 50 years and he was a lorry cleaner; he sustained multiple laceration on the distal third thigh and Grade III B open fracture of both bones right leg. He was taken treatment as inpatient at Government Hospital, Salem from 12.01.2012 to 30.01.2012 and thereafter, advance treatment in Chennai from 31.01.2012 to 20.02.2013. He was treated with wound debridement, external fixation with skin grafting and flap cover. Because of the injury, the claimant suffered pain, swelling, deformity due to mal-union of right leg and loss of flexion movements right knee and restricted movements of right ankle. Based on the evidence of P.W.2/doctor's and other medical records, the Tribunal has rightly determined at 40% disability .

5. The injured is a cleaner, 50 years old and mal-union of bones made him impossible, to do normal work as cleaner as well as the driver in future. Therefore, 40% disability for loss of income determined by the driver cannot be set aside. Therefore, the loss of income taken at Rs.4,500/- p.m. and adopting multiplier 13 and determining the loss of earning power at Rs.2,80,800/- is confirmed, even though Rs.4,500/- taken by the Tribunal is on the lower side. In view of that Rs.50,000/- awarded towards pain and suffering, Rs.45,000/- towards loss of income during treatment period, Rs.10,000/- towards food and extra nourishment, Rs.5,000/- towards transportation and Rs.1,200/- towards loss of personal belongings, Rs.15,000/- towards attender charges, in all amounting to Rs.4,07,000/- along with interest 7.5% are hereby confirmed.

6. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

7. The appellant-Insurance Company is directed to deposit the entire award amount along with interest and costs within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant is permitted to withdraw the entire award amount along with interest.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Special Sub Court No.I, Salem.

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krd 13/4