



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2015**

CORAM:

THE HONOURABLE MS.JUSTICE **V.M.VELUMANI**

CMA. (MD) No. 97 of 2013

and

M.P (MD) No. 1 of 2013

The Divisional Engineer,
Iffco-Tokyo General Insurance
Company Ltd.,
Tulsi Chambers
III-Floor, No.195, T.V.Swamy Road,
R.S.Puram, Coimbatore.

:Appellant/2nd Respondent

Vs.

1.Danasekar
2.R.P.Gowtham

: 1st respondent/Petitioner
: 2nd Respondent/1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Fair and Decreetal order, dated 11.09.2012 made in MCOP No.1404 of 2008, on the file of Motor Accident Claims Tribunal, (III Additional Sub Court), Trichy.

For Appellant : Mrs.K.R.Shiva Shankari for
Mr.S.Srinivasa Raghavan
For R1 : Mr.N.Sudhagar Nagaraj
For R2 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is filed against the order, dated 11.09.2012, made in M.C.O.P.No.1404 of 2008, awarding the compensation of Rs.3,20,975/-/-.

2.The appellant/Insurance Company is the second respondent in M.C.O.P.No.1404 of 2008. The first respondent is the claimant and the second respondent is the owner of the vehicle, which is insured with the appellant. On 14.12.2007, when the first respondent was driving the TVS Scooty in Trichy-Chennai Highways, a Toyota Innova Car bearing Registration No.TN.45 M.M.0999 was standing on the middle of the road, opposite to Mahadevan Saw Mill without any indication. The claimant hit the said vehicle and was thrown out of his vehicle and suffered injury. He was treated in Rathina Global Hospital and he spent Rs.1,50,000/- for his medical expenses. He has suffered permanent disability. A Criminal case was registered in Cr.No.378 of 2008 against the claimant, but he was acquitted in the criminal case. He was aged about 42 years at the time of accident and was working as Ticket Agent in Parveen Bus Service Company. He was earning Rs.3,000/- per month. Therefore, he claimed a sum of Rs.5,00,000/- as compensation.



3.The appellant in the counter affidavit denied their liability on the ground that the vehicle of the second respondent was standing in the middle of the road without any indication and the accident took place when the claimant dashed against the said car. According to the appellant, the first respondent/claimant is not entitled to any compensation and prayed for dismissal of the claim petition.

4.The first respondent examined himself as P.W.1 and examined one Doctor Mr.V.R.Ravi as P.W.2 and marked 9 documents as Ex.A1 to Ex.A9. The appellant has examined two witnesses and marked one document. The C.D. file of the FIR in Cr.No.378 of 2007 was marked as Court document.

5.The Tribunal considering the pleadings and evidence and materials on record, came to the conclusion that the first respondent is not responsible for the accident as he was acquitted by the Criminal Court and that accident took place only due to the negligence of the driver of the Innova Car belonging to the second respondent. The Tribunal held that the appellant is liable to pay compensation.

6.The Doctor V.R.Ravi examined as P.W.2 has stated that permanent disability suffered by the first respondent is 45% and in the cross-examination he has admitted that by treatment, disability can be reduced to 42%. The Tribunal took the permanent disability at 42% and applying multiplier method and arrived at compensation payable at Rs.2,26,800/- for loss of income. The Tribunal awarded a sum of Rs.25,000/- for pain and suffering, Rs.5,000/- for extra nourishment, Rs.5,000/- for Transportation, Rs.1,000/- for damaging of clothes, Rs.44,175/- for Medical expenses, Rs.5,000/- for attendant charges and Rs.9,000/- for loss of income during the treatment period. A total sum of Rs.3,20,975/- was awarded by the Tribunal.

7.Aggrieved against the said order, the Insurance Company has filed the present Appeal.

8. The learned counsel for the appellant contended that:-

i)The accident took place only due to the negligence of the first respondent and he is not entitled to get any compensation for his own negligence as per various judgments of this Court and Apex Court. The first respondent himself being a tort-feasor and he has caused the accident by his own negligence and the claim petition is not maintainable under any of the provisions of the Motor Vehicles Act. The first respondent was not possessing driving licence and he drove the vehicle in a rash and negligent manner. The accident was caused by his own negligence. From the FIR, it is seen that the first respondent was responsible for the accident, Therefore, claim petition ought to have been dismissed.



In any event, the compensation granted a sum of Rs.2,26,800/- for disability is not correct.

9. Per contra, the learned counsel for the first respondent has stated that the first respondent has proved that the accident took place only due to rash and negligent driving by driver of the second respondent and percentage of disability, income and age. Therefore, the Compensation awarded by the Tribunal is just and proper and prayed for dismissal of the Civil Miscellaneous Appeal.

10. I have carefully perused the materials on record and considering the arguments of the learned counsel for the appellant and the respondent.

11. The appellant is alleging that the first respondent is tort-feasor and therefore, he is not entitled to get compensation. This claim is based on the FIR filed against the first respondent. The Criminal Court acquitted the first respondent. The appellant has not examined the driver of the vehicle or the second respondent to prove that the accident took place only due to negligence driving of the first respondent/claimant. Therefore, there is no reason to set aside the conclusion of the Tribunal that the accident took place due to rash and negligence of the driver of the second respondent.

12. The Tribunal has applied the correct multiplier and awarded a sum of Rs.3,20,975/- as compensation. The appellant has not substantiated its claim that compensation awarded is excessive. The award of Rs.2,26,800/- for disability is not excessive. Therefore, I hold that the Civil Miscellaneous Appeal fails as devoid of merits.

13. Accordingly, this appeal is dismissed. NO costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
(III Additional Sub Court), Trichy.

+1cc to Mr.S.Srinivasaraghavan, Advocate Sr.No.41432

+1cc to Mr.N.Sudhagar nagaraj, Advocate Sr.No.40730

am

AA/04.09.2015/3p-4c

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