IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.128 of 2016
and
C.M.P.No.1135 of 2016

M/s.United India Insurance Co.Ltd.,
No.144, Kalpana Road,
Udumalpet. ... Appellant/3rd Party

Vs.

1.M.Pradeep
...1st Respondent/Petitioner
2.Narayanasamy
3.Rajesh ...2nd & 3rd Respondents/1st & 2nd Respondents

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.02.2015 made in MCOP No.392 of 2012 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Udumalpet.

For Appellant : Mr.J.Chandran

For 1st Respondent : Mr.S.P.Yuvaraj

JUDGMENT

This Appeal is directed against the Judgment and Decree dated 27.02.2015 made in MCOP No.392 of 2012 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Udumalpet, in awarding a sum of Rs.8,07,000/- along with with interest at the rate of 7.5% p.a., in favour of the first respondent/claimant, and also directing the Insurance Company/the appellant herein to deposit the award amount before the Tribunal with liberty to recover the same from the third respondent herein.

2. The learned counsel appearing for the appellant/Insurance Company would submit that the learned Tribunal ought to have held that the accident had occurred

solely due to the rash and negligent act of the second respondent herein who rode the motor cycle. The learned Tribunal ought to have rejected the medical bills of Rs.5,40,000/- as false. Without any supportive documents to believe, adding further, he would submit that the award amount towards compensation for the injuries sustained by the claimant/first respondent is exorbitant, arbitrary and contrary to the provisions of law. Eventually, the learned counsel would submit that when the testimony of RW.1 and RW.2 and Exs.R1 to R8 would lead to show that the driver had no valid driving licence, the learned Tribunal ought to have totally exonerated the liability against the Insurance Company/appellant herein instead of ordering pay and recover.

3. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the claimant/first respondent and perused the impugned judgment.

4. On the fateful day, i.e., on 12.11.2012 at about 7.00 p.m., the claimant/first respondent was travelling as a pillion rider in the Hero Honda Splender Motor Cycle bearing Reg.No.TN-52-X-5297, which was driven by the second respondent and when the said Motor Cycle was nearing Viswadeepthi High School at Pollachi - Palani Road, it dashed against one Krishnakumar, who was trying to cross the road from South to Northern side. In the impact, the claimant/first respondent was thrown away on the road and sustained grievous injuries which are as follows:-

1. Fracture in right temporal bone with diastasis of coronal suture.
2. Fracture in left parietal bone.
3. Fracture of roof and lateral wall of left orbit.
4. Fracture in both maxilla.
5. Fracture of Acromion process left shoulder.
6. Sutured wound 7 cm long over the left frontal region.
7. Abrasions over the left shoulder, left elbow and left knee.

Immediately, he was taken to the Government Hospital, Pollachi, and first aid was given to him and due to seriousness of the injuries sustained, he was referred to CMC Hospital, Coimbatore. Subsequently, for better treatment, he was admitted into KG Hospital, Coimbatore. He took treatment as inpatient from 13.11.2012 to 21.11.2012 and surgeries were done for bone fractures. He spent a sum of Rs.5,00,000/- towards medical and hospital expenses. Even after he was discharged, he had to visit KG Hospital, Coimbatore by engaging a taxi for post operative treatment and thereby, he spent nearly Rs.20,000/- as travelling expenses. Still, he is taking treatment for his pain and sufferings. Besides, timely, a case was registered in Crime No.445/2012 under section 279 and 337 and 304(A) of the IPC against the second respondent herein for having caused the accident.

5. A perusal of the records clearly shows that the claimant/first respondent was hale and healthy prior to the accident and he was 22 years old at the time of the accident. He was working as Business Development Executive in M/s.Imageicon Presentations (India) Pvt.Ltd., and earning a sum of Rs.21,000/- per month, according to the claimant. He is the sole bred winner of the family. Due to the injuries sustained, the claimant/first respondent has become permanently disabled person and he is unable to go to his work and earn as before.

6. In these background the Tribunal, after considering the oral and documentary evidence and taking into account the case registered against the second respondent with regard to the accident, held that the second respondent was negligent in driving the motor cycle and the respondents before the Tribunal are liable to compensate the claimant. Though the documents were produced by the claimant to substantiate that he was earning a sum of Rs.12,000/- per month, the Tribunal on considering other evidences, disbelieved such claim and fixed the notional monthly income at the rate of Rs.7,500/-. The injured claimant was 22 years at the time of the accident. The learned Tribunal rightly fixed the multiplier as 18. Considering the injuries sustained, the learned Tribunal came to the conclusion that he would lose 1/10 earning capacity and the Tribunal has determined the loss of earning power and future income as Rs.1,62,000 (Rs.7500 X 12 X 18/10 = 1,62,000). A heavy contention was advanced by Mr.J.Chandran, learned counsel for the Insurance Company against the claim of medical expenses on the ground that it is a false. In this regard, a careful reading of the award of the Tribunal to work out the compensation on the medical expenses shows that the claimant was serving as Business Development Executive in Imageicon Presentations (India) Private Limited and claimed to have received a monthly income of Rs.21,000/- for which also, he has marked Exs.P.12 and P.13 to prove that he was employed in Imageicon Presentations (India) Private Limited for the said salary. However, the Tribunal fixing Rs.7,500/- as the notional monthly income has accepted the medical bills issued by the hospital, marked as Exs.P.4 and P.5. Therefore, this Court, although finds that fixing the notional monthly income at Rs.7,500/- is not in tune with the salary certificate, cannot accept the contention of the learned counsel for the Insurance Company that the claim towards medical bills is false. Taking

into account Exs.P4 and P5, Hospital Charges and medical bills, the learned Tribunal has rightly awarded a sum of Rs.5,40,000 towards Hospital and Medical bills. Since he could not go to the office due to the injuries sustained for a period of six months, the learned Tribunal has rightly awarded a sum of Rs.45,000/- (Rs.7500 X 6 = 45,000). Again the learned Tribunal has awarded a sum of Rs.30,000/- under the head, Transportation charges, nutrition, and loss of increment and a sum of Rs.30,000/- towards pain and sufferings, which are also seem to be just and reasonable. In toto, the learned Tribunal has rightly awarded a sum of Rs.8,07,000/-, which in my considered opinion, is just and reasonable compensation, while considering the oral and documentary evidence made available in the case.

7. Ultimately, the Tribunal has ordered the appellant Insurance Company to deposit the award amount with liberty to recover the same from the second respondent/owner of the motor cycle before the Tribunal, which is in consonance with the ratio laid down in the case of Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others reported in 2004 (2) CTC 464. Hence, this Court is not inclined to interfere with the impugned Judgment and Decree of the Tribunal.

8. For the reasons stated above, the impugned Judgment and Decree of the Tribunal is confirmed and the Appeal is dismissed. No costs. The connected Miscellaneous Petition is closed.

9. The learned counsel appearing for the appellant Insurance Company would submit that the appellant has already deposited a sum of Rs.25,000/- towards the award amount and sought six weeks time to deposit the balance award amount. However, considering the plight of the injured claimant, this Court directs the appellant Insurance Company to deposit the balance award amount within a period of four weeks from the date of receipt of a copy of this order.

10. On such deposit, the claimant/first respondent is permitted to move an appropriate application before the Tribunal seeking withdrawal of the entire award amount.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
(Subordinate Judge),
Udumalpet.

+1cc to Mr.J.Chandran, Advocate, S.R.No.6250
+1cc to Mr.S.P.Yuvaraj, Advocate, S.R.No.5788

C.M.A.No.128 of 2016
and
CMP No.1135 of 2016

RSY(CO)
CA(26/04/2016)