IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.11.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.142 of 2014

The Branch Manager,
M/s.United India Insurance Co. Ltd.,
Micro Branch Office,
Behind Centra Theatre,
Gandhi Nagar, Krishnagiri. .. Appellant

Versus

1.S.Ammasiyappan
2.L.Nagarathinam .. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 28.03.2013 made in M.C.O.P.No.329/2009 on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Judge), Krishnagiri.

For Appellant : Mr.T.Ravichandran

For Respondents : Mr.Mukund R.Pandiyan for R1
No appearance for R2

J U D G M E N T

The United India Insurance Company Limited has filed the present Civil Miscellaneous Appeal, challenging the correctness of the impugned award dated

28.03.2013 made in M.C.O.P.No.329/2009 on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Judge), Krishnagiri.

2.It is the case of the claimant that on 03.12.2007 at about 18.30 hours, when the claimant was cycling on the left side of the road in Basavankoil to Bargur Road, near Athupalam, the rider/second respondent herein drove the Star City Motor Cycle bearing Registration No.TN 24/C 1111 in a rash and negligent manner and dashed on the said cyclist and caused the accident. According to the claimant, the accident had happened due to the rash and negligent driving of the driver of the said vehicle.

3.Learned counsel appearing for the appellant would submit that as per the policy condition, the rider of the vehicle should possess valid driving licence, but in this case, the rider of the same, has violated the policy condition and also categorically admitted that he was not having valid driving licence and does not possess the same to drive any kind of motor cycle. Without considering the said aspect, the learned Tribunal has saddled the entire liability on the part of the Insurance Company. Arguing further, he would submit that the learned Tribunal ought to have considered the fact that without following any medical guideline, the Doctor has assessed the disability at 45% and therefore, a huge sum of Rs.2,91,600/- has been awarded under the head 'loss of income', which is un-reasonable. He would further submit that it is not a case of adopting multiplier method, but, the learned Tribunal has adopted the same and thereby, awarded a huge compensation to the simple injuries sustained by the claimant. Therefore, the same is liable to be interfered with.

4.Learned counsel appearing for the claimant would submit that as argued by the learned counsel for the Insurance Company, the claimant has not sustained simple injuries, but he has sustained the injuries namely, subdural haematoma, laceration right paretal region 3 x 2 c.m., scapula left upper bonder fracture, acute extradural hematoma over the left temporo parietal convexity with mass effect, fracture of left squamous temporal bone. As per the wound certificate marked as Ex.A2 issued by GH, Krishnagiri, he sustained grievous injuries in RTA on 03.12.2007. The Discharge summary of ARK Nursing Home, marked as Ex.A3 reveals that the claimant was admitted in the said hospital on 08.12.2007 and discharged on 15.12.2007 and he was treated for subdural haematoma. Another discharge summary of NIMHANS hospital, marked as Ex.A4 reveals that the claimant was admitted on 04.12.2007 and discharged on 04.12.2007.

4.1.Learned counsel for the claimant would further submit that the learned Tribunal, on the basis of the evidence adduced by the Doctor, supported with the wound certificate, marked as Ex.A2, two discharge summaries, marked as Ex.A3 & A4, CT Scan report, marked as Ex.A5, two X-rays marked as Ex.A9 & A10 and CT Scan report marked as Ex.A11 and also considering the above said grievous injuries, has fixed the disability at 45% and has adopted the multiplier 18 as per the II Schedule of Motor Vehicles Act by merely fixing the monthly income at Rs.3,000/- and has awarded a sum of Rs.2,91,600/- towards loss of future income and hence, the same cannot be found fault with.

5.This Court also finds that the said claimant while cycling, was hit by the offending driver of the vehicle. While coming to the injuries sustained by the claimant, it is seen that as per the disability certificate marked as Ex.A.8, he has sustained the injuries namely, left scapula upper border fracture is malunited and suffers PTS and ROM, squaness temporal bone left fracture, left tempro parietal extra dural hemorrhage haemotoma and craniotimi, which are clearly indicating that the claimant has not suffered simple injuries. There was a head injury, namely, subdural haematoma and evacuation surgery was done and bone in right scalp region was also removed, which causes him cosmetic disfigurement and also he suffers giddiness and headache. In view of the above said grievous injuries, the learned Tribunal, accepting the disability certificate issued by P.W.2/Doctor Devendiran, certifying 45% partial and permanent, has rightly fixed 45% disability, which cannot be found fault with. Therefore, it has arrived at a sum of Rs.2,91,600/- (3000 x 12 x 18 x 45/100) towards loss of future income by applying the multiplier 18 as per II Schedule of Motor Vehicles Act and in the absence of any proof to show his income, by fixing Rs.3,000/- as monthly income of the claimant, which in my considered opinion cannot be found exorbitant. Similarly, a sum of Rs.30,000/- towards pain and suffering, a sum of Rs.15,000 towards Transport, Nutrition and Attender charges, a sum of Rs.9,600/- towards medical bills and a sum of Rs.10,000/- towards future treatment have been awarded, hence, the same cannot be found fault with.

5.1.Coming to the case of the Insurance Company that when they have filed additional counter before the Tribunal, had taken a plea that the rider/owner of the two wheeler does not possess driving licence to drive any kind of motor vehicle and therefore, the Insurance Company cannot be held liable to pay the compensation. This plea was not adequately answered by the learned Tribunal. Although notice was issued to the owner of the vehicle/ second respondent herein and private notice has also been served and for which proof affidavit was also filed by the Insurance Company, no one appeared on behalf of the second respondent, which shows that they were not prepared to answer the plea taken by the Insurance Company. However, non possessing of the driving licence by the driver of the vehicle involved in the accident does not absolve the Insurance Company from payment of compensation as there was a valid insurance policy on the date of accident. Therefore, this Court is inclined to apply the rule of pay and recovery in favour of the Insurance Company. Accordingly, the Insurance Company is directed to pay the award amount and recover the same from the owner of the vehicle.

6.For all the above reasons, this Court is not inclined to interfere with the impugned award. Accordingly, the award is confirmed and the appeal is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

7.Since the learned counsel for the appellant/Insurance Company submitted that the appellant/Insurance Company had deposited 50% of the award amount, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. Failing which the interest shall be 12%. On such deposit, it is for the claimant to move a petition before the Tribunal for withdrawing the said amount.

10.11.2016

Index : Yes / No
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To

1.The Motor Accidents Claims Tribunal,

(Principal Subordinate Judge), Krishnagiri.

2.The Section Officer,
V.R.Section,
High Court, Madras.

T.RAJA, J.

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