IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No. 2499 of 2011
and
M.P. No. 1 of 2011

United India Insurance Co. Ltd.,
146N, Kumar Complex
Tiruchengode (PO & Tk)
Namakkal District. ... Appellant/ 2nd respondent

Vs.

1. Selvaraj ... 1st Respondent/ Petitioner

2. The Chairman
M.S. Vivekandha College of
Education for Women
Elayampalayam (PO)
Tiruchengode (Taluk)
Namakkal District. ..2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 26.11.2010 made in M.C.O.P No. 406 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

For Appellant : R.Srividya for
Mr. K.S. Narasimhan

For Respondents: Mr. Ma.P. Thangavel for R1

J U D G M E N T

The Insurance Company has come up with this appeal challenging the liability and the quantum of compensation granted by the Tribunal.

2. In an accident which occurred on 09.04.2008, the claimant/1st respondent sustained bone fracture on his left and right pelvis and left shoulder and other multiple injuries all over his body. Hence, he filed a Claim Petition before the

Tribunal seeking a sum of Rs.3,00,000/- as compensation. After analyzing the available oral and documentary evidence, the Tribunal awarded a sum of Rs.81,448/- as compensation, under the following heads:

Sl.No.	*Heads*	*Amount*
1	Disability 21%	Rs. 31,500.00
2	Loss of Income	Rs. 12,000.00
3	Pain and Sufferings	Rs. 15,000.00
4	Extra nourishment	Rs. 10,000.00
5	Transport Expenses	Rs. 5,000.00
6	Medical Bills	Rs. 7,948.00
	Total	Rs. 81,448.00

3. Learned counsel appearing for the appellant/Insurance Company, disputing the manner of accident, would mainly contend that the driver of the bus did not possess valid and effective driving licence to drive a public service vehicle and therefore there is violation of policy condition and hence the Tribunal has wrongly directed the appellant Insurance Company to pay the compensation, without the right of recovery. Further, questioning the quantum of compensation, it is stated that the award passed by the Tribunal is very excessive when compared to the injuries sustained by the claimant and that the Tribunal ought not have fixed 21% disability to calculate the loss of income of the injured, since it is an exaggerated assessment. Hence, the Insurance Company has filed this Appeal.

4. On the other hand, learned counsel appearing for the 1st respondent/claimant would submit that at the time of accident, the claimant, was a retired Health Inspector, doing tourist car rental business and earning a sum of Rs.7000/- per month. Subsequent to the accident, due to the fractures on the ribs, he often gets chest pain and has suffered partial permanent disability, which would certainly have an impact in his avocation and hence the Tribunal is right in assessing his disability at 21% and granting Rs.1500/- per percentage. Hence, he pleaded for dismissal of the Appeal.

5. A perusal of the records would show that the injured claimant was aged 63 years at the time of accident and is a retired Health Inspector and also doing tourist car rental business. The Tribunal has rightly considered that due to the fractures on the ribs, there would certainly be an impact in his avocation and has rightly assessed the disability at 21%. Hence, this Court is not inclined to interfere with the compensation awarded by the Tribunal towards "Permanent

Disability" and " Loss of income". Taking note of the injuries sustained by claimant, the compensation awarded under other heads are also confirmed.

6. The fact that there was no proper driving license was not disputed by the second respondent herein. This Court is of the view that the finding of the Tribunal that the burden is on the Insurance Company to prove that the driver of the bus had no valid license at the time of accident, cannot be accepted and the owner of the vehicle namely, the 2nd respondent herein, cannot be absolved of his liability. Hence, this Court makes it very clear that the appellant/ Insurance Company is entitled to recover the compensation awarded to the claimant, from the 2nd respondent.

7. In fine, the Civil Miscellaneous Appeal is partly allowed, confirming the quantum of compensation and the rate of interest at 7.5% per annum awarded by the Tribunal. Vide order of this Court dated 11.12.2012, the appellant/ Insurance Company has already been directed to deposit the entire award amount together with the accrued interest, less the amount already deposited if any, to the credit of M.C.O.P.No.406 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal. If not deposited, the appellant/ Insurance Company shall deposit the same, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay compensation to the claimant, less the amount already withdrawn, in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company. No costs. Consequently, connected M.P.No.1 of 2011 is also closed.

-s/d-
Assistant Registrar(CSIV)

True Copy

Sub-Assistant Registrar

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To:
1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Namakkal.

2.The Section Officer
VR Section High Court Madras

+1 cc to Mr. Ma.P. Thangavel, advocate SR NO 12621[1/7/16]

+1 cc to Mrs.R.Sree Vidhya Advocate sr.12670/16

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aa02/06/2016