IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2435 of 2016 and
C.M.P. No.17130 of 2016

Cholamandalam MS General Insurance Company Limited,
2nd Floor, Dare House,
No.2, N.S.C. Bose Road,
Chennai. ... Appellant

Versus

1.Rathakrishnan
2.Sankar ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 18.11.2015 made in M.C.O.P. No.1 of 2014 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court & Chief Magistrate Court, Ariyalur.

For appellant : Mr.N.Vijayaraghavan

J U D G M E N T

M/s.Cholamandalam MS General Insurance Company Limited having suffered the liability to pay the quantum of compensation of Rs.4,74,107/- for the injuries sustained by the injured in the accident occurred on 17.05.2013 at about 10.30 a.m., while the injured riding his unregistered Splendor Pro Motor Cycle along with another boy was proceeding from east to west direction near NachiyarpettiaSun Cement Company from Gangaikondacholapuram village to Ariyalur R.T.O.Office, a Bolero camper vehicle bearing No.TN 61 6152 dashed against them and as a result, the injured sustained fracture in his right leg below the knee portion, fracture in the right hand elbow, fracture in the left leg ring finger and lacerated injury all over the body, has filed the present appeal.

2. Learned counsel for the appellant/ Insurance Company has submitted that the quantum of compensation awarded by the Tribunal for a sum of Rs.4,74,107/- for the injuries sustained by the injured is unreasonable. He would further submit that when the injured was riding the splendor pro motor cycle along with another boy was hit by the Bolero Camper vehicle bearing

No.TN61 6152 and as a result, the injured sustained fracture in his right leg below his knee portion and grievious injuries all over the body. But when the accident had occurred only due to rash and negligent driving of the injured, the appellant/Insurance Company is no way liable to pay amount. More over, the driver of the offending vehicle did not possess the valid license at the time of accident and that it is a clear violation of policy. Therefore, the appellant/Insurance Company is not liable to pay the compensation.

3. Since the second respondent / owner of the vehicle colluded together with the police and influenced to file the First Information Report against the driver of the offending vehicle, the appellant/Insurance Company cannot saddle with the liability. But the appellant/Insurance Company has not examined any witness to prove the fact that the injured is only responsible for the accident and this fact could not be proved on the side of the respondents by examining oral evidence and the appellant/Insurance Company has not taken any steps to examine any witness. On the other hand, the injured/claimant who sustained injury in the accident was examined before the Tribunal as PW1 and in his evidence, he has clearly deposed before the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle, since the FIR was registered against the driving of the second respondent. The Tribunal after perusing the copy of the FIR-Ex.P1, Discharge summary-Ex.P2, Copy of the Wound Certificate – Ex.P3, Medical Bills marked as Ex.P4, Copy of Driving License marked as Ex.P5, Trip Sheets marked as Ex.P6, Disability Certificate marked as Ex.P7 and X-ray marked as Ex.P8, had considered the entirety of the case and however, finding that the owner of the vehicle remains ex parte and not come forward to examine any witness to prove the accident, the Tribunal has ultimately come to the conclusion that the driver of the offending vehicle is responsible for the accident. After answering the quantum of compensation with regard to negligence, it has also saddled the liability on the appellant/Insurance Company. However, with regard to pay and recovery, the Tribunal has also ordered pay and recovery in favour of the appellant Insurance Company after giving a finding that the driver of the offending vehicle was not having badge permit and the Insurance Officer who was examined as RW1-Saravanabavan, has deposed that the driver of the offending vehicle was not having badge permit. On the basis of the evidence adduced by RW1, the Tribunal has also ordered that the compensation to be paid by the appellant/Insurance Company and subsequently, the same can be recovered from the 2nd respondent.

4. The injured had sustained the following injuries:

1. fracture in the right leg below the knee portion.
2. fracture in the right hand elbow portion
3. fracture in the left leg ring finger
4. lacerated injury all over the body.

5. Dr.Kanmani, who was examined as PW2, has assessed the partial permanent disability at 62%. On perusal of the evidence of PW2, the Tribunal has found that the injured has sustained 62% partial permanent disability and however, it has converted 62% to whole body and has fixed 25% permanent disability for calculating the compensation by applying the multiplier method. Therefore, the disability has been calculated as follows:

Disability (Rs.7,000/- x 12 x 16 = Rs.13,44,000/-)	
Out of which 25% of amount	Rs.3,36,000.00

6. After the accident, the injured was admitted in the Government Hospital, Jayankondam and subsequently, he was admitted at Medical College Hospital, Thanjavur for better treatment for period of 60 days. As the injured was taking treatment from two hospitals and admitted as inpatient for 60 days, he has spent considerably a sum of Rs.3 lakhs for his treatment, the Tribunal has fixed a sum of Rs.42,000/- towards loss of income (at the rate of Rs.7000/- as notional monthly income for a period of six months), a sum of Rs.50,000/- towards pain and suffering and a sum of Rs.17,500/- towards transport and a sum of Rs.10,000/- towards extra nourishment and a sum of Rs.18,607/- towards medical expenses are very reasonable. With regard to disability, since the injured was a driver accepting the driving license produced by the injured, the Tribunal has fixed a sum of Rs.7,000/- as notional monthly income and accordingly, fixing he functional disability at 25%, the Tribunal rightly applying the multiplier '16', has determined the disability to Rs.3,36,000/- and the same is very reasonable. Hence, this Court is not able to find any merit in this appeal. Accordingly, the Civil Miscellaneous appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

7.Since the learned counsel for the appellant/Insurance Company submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, 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. On such deposit, it is for the claimant to move a petition before the learned Tribunal for withdrawing the said amount.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Court
   & Chief Magistrate Court,
   Motor Accidents Claims Tribunal,
   Ariyalur.

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

+1cc to Mr.Vijayaraghavan, Advocate, S.R.No.72037

CP(CO)
RS(30/10/2017)

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