

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 22.11.2016

Judgment Pronounced on : 03.03.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.2523 of 2009
and MP. Nos.1 &2 of 2009

United India Insurance Co. Ltd.,
Rep. by its Branch Manager.
No.235, Gandhi Road, Arni,
Thiruvannamalai District. ... Appellant/2nd Respondent

Vs.

1.Selvam 1st respondent/claimant
2.P.Kumaresan ... 2nd Respondent/Ist Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the decree and judgment dated 20.11.2008 made in OP.No.235 of 2006 passed by the Chief Judicial Magistrate on the file of the Motor Accident Claims Tribunal, Krishnagiri.

For Appellant : Mr.K.Padmanabhan
for Mr.M.J.Vijayaraghavan
For Respondents : Mr. V.Kumaravel [R1]
No appearance [R2]

JUDGMENT

The insurance company which was arrayed as the second respondent in MCOP No.235/2006 on the file of MACT (Chief Judicial Magistrate's Court), Krishnagiri, has preferred this appeal challenging its liability as well as the quantum of compensation determined in the award dated 20.11.2008.

2. On 03-10-2005, the claimant, while he was travelling in his moped was knocked down by a mini door pick-up van bearing No.TN29-V-4145 belonging to the second respondent herein. In the accident the claimant suffered grievous injuries for which he approached the Tribunal seeking a compensation of Rs.2,00,000/- as against which the Tribunal passed an award for Rs.58,354/- payable with interest at 7.5% and fastened the liability jointly and severally on the owner as well the insurance company of the offending vehicle. Before the Tribunal, the appellant had contended that the driver of the offending vehicle did not

possess a valid driving licence. During enquiry, it however did not choose to adduce any evidence including documentary evidence to substantiate this aspect.

3. The learned counsel for the appellant's contentions were three-folded :

(a) That inasmuch as the insurance company had pleaded that the driver of the vehicle did not possess a valid driving licence, the Tribunal ought to have raised it as a specific point for consideration but it has entirely ignored this;

(b) That the quantum as determined by the Tribunal is not just, fair or appropriate especially the one for Rs.40,000/- granted under the head of grievous injuries. He added that the claimant has not even produced the accident register issued by the hospital to establish the nature of the injury he suffered immediately after the accident; and

(c) The very accident is suspect since FIR was registered only three days after the alleged occurrence of the accident.

4. Per contra, the learned counsel for the claimant/1st respondent would contend that nothing prevented the appellant from adducing any evidence necessary to establish its defence and hence it is precluded from taking exception to the correctness of the award passed. And, the contention that the claimant has not produced any document to establish his injury too was not correct as the claimant has produced Ext.P-2, wound certificate.

5.1 This Court does not find any merit in the contention of the learned counsel for the appellant. The accident had taken place on 03-10-2005 at about 5.30 p.m. He was immediately admitted in Oothankarai Government Hospital and Ext.P-2 Accident Register/Wound Certificate would show that he was so admitted at 6.00 pm. As to his health condition it was stated that he was unconscious and was not oriented at that time of his admission in the hospital. It was this claimant, who after two days had preferred a complaint leading to the registration of Ext.P-1 FIR. Law does not insist or expect someone who is badly injured in an accident to rush to the police station first. Therefore a delay in filing in FIR has no adverse evidentiary impact to suspect the very accident, more so in a proceeding instituted for obtaining compensation from a MACT.

5.2 As to the next aspect relating to the objection on perceived excessive compensation is concerned, Ext.P-2 shows that the claimant has suffered few injuries and there were grievous injuries too. There is no contra evidence adduced by the appellant to take away the evidentiary value of Ext.P-2.

5.3 As to the last aspect of want of a valid driving licence for the driver of the offending vehicle, as was referred to a couple of times above, the appellant has chosen not to let in any evidence of any kind to prove its contention.

6. A conjoint reading of all these aspects would only go to show that the appellant has not been able to create a situation that warrants an interference with the award of the Tribunal by this Court.

7. In the result, this appeal is dismissed but without costs. The appellant insurance company is directed to deposit the award amount, less if any already deposited, within a period of four weeks from the date of receipt of copy of this order, whereupon the claimant is permitted to withdraw the same forthwith. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To:

1. The Motor Accident Claims Tribunal
Chief Judicial Magistrate Court, Krishnagiri
 2. The Section Officer, VR Section, High Court, Madras.
- +1 CC to Mr. M.J. Vijayaraghavan, Advocate sr 68429

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