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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.06.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No. 2036 of 2017
and
CMP No.10924 of 2017

The United India Insurance Company Ltd.,
Branch No.1,
Super Bazaar,
Trichy - 8.

... Appellant/2nd Respondent

Versus

1. Kamalakannan ... 1st Respondent/Petitioner
2. Narayanasamy ... 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 15.06.2004 made in M.A.C.T.O.P. No.998 of 2000, on the file of Motor Accidents Claims Tribunal, (First Additional Sub-Judge), Cuddalore.

For appellant : Mr.S.J.Jagadev
For respondents: Mr.D.Baskar for R1
R2- NDW

J U D G M E N T

The claimant, Kamalakannan, aged 20 years, Lorry Cleaner earning a sum of Rs.3,000/- per month, met with an accident on 10.10.1999 in which he sustained injuries. Therefore, he filed a claim petition claiming compensation in a sum of Rs.1,50,000/- as compensation.

2. The Tribunal, considering the injuries suffered by the claimant, on a consideration of oral and documentary evidence, awarded compensation in a sum of Rs.1,35,000/- under the following heads :-



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Permanent disablement	:	Rs.1,00,000/-
Transportation	:	5,000/-
Medical expenses	:	5,000/-
Pain and sufferings	:	25,000/-

Total	:	Rs.1,35,000/-

Challenging the award as excessive, the Insurance Company has filed this appeal.

3. Learned counsel appearing for the appellant submits that the compensation awarded is excessive, in the case of fracture suffered by the claimant on his right thigh and the fixing of negligence solely on the driver of the lorry insured with the appellant, when even the opposite vehicle was also equally at fault.

4. A careful perusal of the order passed by the Tribunal reveals that the appellant/insurance company with which the offending lorry was insured, had not adduced any evidence in support of the negligence on the driver of the other vehicle. The driver of the offending vehicle is the best person to speak about the accident. However, non-examination of the driver of the offending lorry is fatal to the case of the appellant. Further, if the contention of the appellant insurance company is that the driver of the other lorry is also equally negligent, it is open to them to have added or impleaded the other lorry as tortfeasor.

5. The evidence on record further reveals that while overtaking the offending vehicle the driver of the other lorry has given signal, but the offending vehicle did not adhere to the rules relating to driving, but drove the vehicle in a rash and negligent manner, thereby, causing the accident. Therefore, considering the evidence in toto, this Court is of the considered view that the Tribunal has appreciated the entire evidence in proper perspective and fixed the negligence on the offending vehicle and the said finding does not call for any interference.

6. Insofar as quantum of compensation awarded is concerned, the doctor has determined the disability at 50%. The compensation awarded by the Tribunal is only a sum of Rs.1,35,000/-, which may appear to be excessive for the year 1999, but not as of now, that is in the year 2017. The compensation awarded is hardly adequate in the face of spiraling inflation and surge in cost of living. Inflation is naturally compounding, and a relentless destroyer of the value of money. The same is supported by the decision of the Hon'ble Supreme



Court in the case of Rathi Menon v. Union of India 2001 (2) KLT 12: (2001 AIR SCW 1074), wherein it has been held that when injuries occurred due to accidental falling of a person, considering the value of money etc., compensation shall be payable on the basis of rules prevailing at the time of making the final order for payment of compensation and not on the money value which prevailed on the date of accident. Even though the compensation may seem to be the higher side, however, after a lapse of a decade, this Court is of the considered view that the compensation awarded does not require any interference.

7. For the reasons aforesaid, the Civil Miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

8. The appellant/Insurance Company is directed to deposit the entire award amount along with interest at 7.5% per annum from the date of petition till the date of deposit, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsi2/GLN

To

1. Motor Accidents Claims Tribunal, (First Additional Sub-Judge),
Cuddalore.
2. The Section Officer, VR Section,
High Court, Madras.(2 copies)

C.M.A. No.2036 of 2017

sks(CO)
TR(03/04/2018)