



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2017

Date of Reserving the Judgment	Date of Pronouncing the Judgment
27.10.2017	09.11.2017

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A. (MD) No.1541 of 2011andM.P (MD) No.1 of 2011

M/s.United India Insurance Company Limited,
7A, West Veli Street,
Madurai Town,
Madurai District,
Through its Divisional Manager. ... Appellant/2nd Respondent

vs.

1.A.Kodiyarasu ... 1st Respondent/Claimant/1st Petitioner2.Veeramanikandan ... 2nd Respondent/1st Respondent

(Notice dispensed with R.2, since ex-parte in the Tribunal)

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.109 of 2009, dated 30.08.2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Sivagangai.

For Appellant : Mr.R.Ravindran

For Respondent No.1 : No appearance

Respondent No.2 : Notice dispensed with exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Appellant/United India Insurance Company against the Judgment and Decree made in M.C.O.P.No.109 of 2009, dated 30.08.2011, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Sivagangai.

2.It is a case of injury in the accident which took place on 23.03.2009 at about 07.00 p.m. When the first respondent/claimant was proceeding in his motor cycle bearing Registration No.TN-20-T-4000 on Madurai-Sivaganai main road, near Kuyavankulam



Vilaku, at that time, a Tata Ace bearing Registration No.TN-63-E-8055 driven by the driver of the second respondent/first respondent in a rash and negligent manner, insured with the appellant/United India Insurance Company, dashed against the two wheeler. Due to the said impact, the first respondent/claimant had sustained multiple injuries all over the body. Immediately, he was taken to Meenakshi Mission Hospital, Madurai and he was treated as an in-patient from 23.03.2009 to 06.04.2009. At the time of accident, the first respondent/claimant was aged about 26 years and was working as a bar bender and earned a sum of Rs.10,000/- per month. Hence, the first respondent/claimant filed a claim petition in made in M.C.O.P.No.109 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Sivagangai., seeking compensation of Rs.5,00,000/- for the injuries sustained by him.

3.The appellant/United India Insurance Company filed counter-affidavit and stated that the first respondent/claimant has to prove that he has valid driving licence to drive the vehicle and denied the age, occupation and income of the injured and further stated that due to the rash and negligent driving of the first respondent/claimant, the accident had occurred and hence prayed for dismissal of the claim petition.

4.The second respondent/first respondent remained ex-parte before the Tribunal.

5.Before the Tribunal, on the side of the claimant, two witnesses viz., P.W.1 and P.W.2 were examined and eleven documents viz., Ex.P.1-xerox copy of the F.I.R, Ex.P.2-copy of the wound certificate, Ex.P.3-Motor Vehicle Inspector's Report, Ex.P.4-discharge summary, Ex.P.5-medical bills for a sum of Rs.600/-, Ex.P.6-medical bills for a sum of Rs.23,515/-, Ex.P.7-medical bills for a sum of Rs.75,976/-, Ex.P.8-medical prescription, Ex.P.9-discharge summary, Ex.P.10-medical bills for a sum of Rs.79,335/- and Ex.P.11-disability certificate and on the side of the second respondent, neither witness was examined nor document was marked to prove his contention and M.O.1-x-rays has been marked.

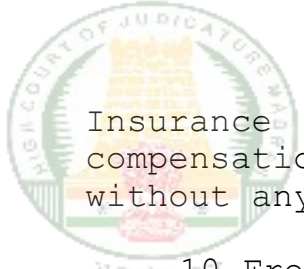
6.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the learned counsel appearing on either side and also appreciating the evidence on record awarded a sum of Rs.3,88,726/- as compensation to the first respondent/claimant.

7.Against the Judgment and Decree, the appellant/United India Insurance Company has filed the present appeal.

8.Heard the learned counsel appearing for the appellant/United India Insurance Company and perused the materials available on record.

<https://hcservices.ecourts.gov.in/hcservices/>

9.The learned counsel appearing for the appellant/United India



Insurance Company submitted that the Tribunal erred in awarding compensation of Rs.3,88,000/- to the first respondent/claimant without any basis and evidence.

10. From the perusal of the materials available, it is seen from the report of the Motor Vehicle Inspector, which is marked as Ex.P.2, that there was a damage in the right side of the Tata Ace and from Ex.P.1, it is seen that the accident had occurred due to the rash and negligent driving of the driver of the TATA Ace. Hence, the Tribunal has arrived at the conclusion that due to the rash and negligent driving of the driver of the second respondent/first respondent, the accident had occurred, which in the considered opinion of this Court, is correct.

11. Further, it is seen that P.W.2-Dr. Shanmugam has given evidence to the effect that the first respondent/claimant admitted in the Meenakshi Mission Hospital, Madurai as an in-patient for five times and there was a fracture in the left leg and two operations have been done for the fracture and he was unable to walk and stand and assessed the disability at 40% and produced M.O.1-x-rays (three numbers). The disability certificate-Ex.P.11, given by the Doctor is rejected, since the first respondent/claimant without the help of others, came to the Court and gave evidence. Hence, the finding given by the Tribunal, which in the considered opinion of this Court, is correct.

12. Further, it is seen that the first respondent/claimant was working as bar bender and for one week, he will avail job for six days and the Tribunal has fixed the income of the first respondent/claimant as Rs.350/- per day and for twenty four days the same has been arrived at Rs.8,400/- and for one year, the same has been arrived at Rs.1,00,800/-. The Tribunal has awarded a sum of Rs.1,00,800/- towards loss of income, a sum of Rs.20,000/- towards pain and sufferings, a sum of Rs.50,000/- towards extra nourishment, a sum of Rs.3,000/- towards transportation charge for taking the injured for the hospital, a sum of Rs.1,000/- towards damages to clothes, a sum of Rs.25,000/- towards damage to the motor cycle, a sum of Rs.1,88,926/- towards medical bills. In total, the Tribunal has awarded a sum of Rs.3,88,726/- as compensation to the first respondent/claimant and directed the appellant/United Insurance Company and the second respondent/first respondent to pay the same, which in the considered opinion of this Court, is reasonable and the same is confirmed.

13. In view of the above, this Court is of the considered opinion that there is no error in the finding of the Tribunal and the Tribunal has awarded just and reasonable compensation. Hence, there is no infirmity or irregularity in the award passed by the Tribunal. Therefore, this Civil Miscellaneous Appeal deserves to be



14. In the result, this Civil Miscellaneous Appeal is dismissed and the Judgment and Decree made in M.C.O.P.No.109 of 2009, dated 30.08.2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Sivagangai, is hereby confirmed. The appellant/United India Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the first respondent/claimant is entitled to withdraw the entire award amount along with accrued interest and cost, without filing any formal petition before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Sivagangai.

Copy to:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.RAVINDRAN Advocate in SR. No. 86625

PS

JS/JC/SAR.1/5.12.2017/4P-4C

Judgment in
C.M.A. (MD) No.1541 of 2011
09.11.2017