IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 31.10.2018
CORAM
THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM
CMA.No.2731 of 2005

M/s. United India Insurance,
Company Limited, represented
by its Divisional Manager,
Cuddalore. …. Appellant/Respondent-2

Versus

1. Tmt.Thoppili ... Respondent-1/Petitioner

2. Mr.V.Murugan …. Respondent-2/Respondent-1

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 02.07.2003 made in M.A.C.T.O.P.No.425 of 2003 on the file of the Additional District Judge, (Fast Track Court No.2) Cuddalore.

For Appellant : Ms.V.Renuka Devi
for Mr.J.Raja Kalifulla

For Respondents: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 02.07.2003 made in M.A.C.T.O.P.No.425 of 2003 on the file of the Additional District Judge, (Fast Track Court No.2) Cuddalore.

2. The brief facts of the case are as follows :-
On 01.11.2000 at about 09.00 a.m., while the claimant was returning to her home, after completion of her work, as a passenger in an auto rickshaw bearing Registration No.TMD-6136, belongs to the first respondent. When the said auto was nearing the Tirupapuliur Railway Gate, the driver of the said vehicle lost his control, dashed against the dividing wall of the road and caused the accident. Hence, the accident occurred due to the rash negligent driving of the driver of the said auto. As a result, the claimant sustained grievous injuries and he was given treatment and inspite of treatments he sustained disability. The claimant has claimed a sum of Rs.5,00,000/- as compensation.

3. The Insurance Company, in the counter statement, has denied the mode of accident and negligence on the part of the driver of the Auto. It is also stated that the driver of the said auto did not possess any valid license at the time of

accident. The rash and negligent driving on the part of the auto driver is also denied by the respondent. The further averment made by the appellant/Insurance Company is that it is only the claimant who got down from the auto suddenly, when the auto rickshaw was moving. The other aspect regarding the claim made by the claimant is also denied as excessive.

4. The Tribunal, upon analyzing the evidence and documents placed before it, has given a finding that, it is the driver of the said auto, who drove in a rash and negligent manner and caused accident. The claimant, who was travelling in the auto as passenger, has sustained injury because of the rash and negligent driving on the part of the driver of the auto rickshaw. The Tribunal has also assessed the nature of injury, age, income and the other related aspects in repoect of disability, inefficiency in his health has awarded a sum of Rs.91,750/- as compensation. Aggrieved against the said award, the appellant/Insurance Company has preferred this appeal.

5. Heard the learned counsel for the appellant. No representation on behalf of the respondent.

6. In the grounds of appeal, the appellant has stated that the finding of the Tribunal, in fixing the liability on the auto driver, is not based on any legal evidence. Further it is stated that the driver of the auto did not possess any valid license, hence, there is violation of policy conditions and in that aspect the appellant/Insurance company is not liable to pay the compensation. The other grievance raised by the appellant is that the claimant ought not to have travell in the said auto by sitting on the edge, hence she herself contributed to the accident. The FIR filed against the auto driver is very much objected, by the appellant/Insurance Company.

7. The other grievance raised by the appellant is that for fixing the liability on the auto driver. In that regard, no witness was examined to prove the statement of the claimant that she sustained injury because of the rash and negligent driving of the driver of the auto. It is also stated that the claimant was travelling in said auto as a gratuitous passenger, hence the policy does not cover for gratuitous passenger.

8. On the side of the appellant, it is argued that negligence was on the part of the claimant, who travelled by sitting on the right side of the auto and invited the accident, hence there is no rash and negligent driving on the part of the driver of the auto. None of the co-passengers were sustained injury and examined before the Tribunal to prove the accident.

9. It is seen that before the Tribunal, the claimant was

examined as PW1, she has deposed that the manner of the accident as stated in the claim petition. Ex.P1-FIR was registered against the driver of the auto. It is also clear evidence that the claimant along with the another person were travelled in the said auto and the driver of the said auto by his rash and negligent driving went in the wrong side and crashed on the divider. But because of her negligence act, she alone sustained injury. Hence, the finding of the tribunal based on the evidence, the FIR and in the absence of any other contradicted evidence placed by the respondent, the rash and negligent driving on the auto driver is very much observed by the Tribunal.

10. The other arguments advanced by the appellant/Insurance company is that the driver of the auto was not possessing valid license at the time of accident. Hence, the Insurance company is not liable to pay any compensation.

11. On a perusal of the records, it is observed that Ex.P4-driving license of the said auto driver has been filed. Hence, the driver was possessing valid license at the time of accident.

12. The other arguments advanced by the appellant is that the claimant travelled as gratuitous passenger and there was no evidence on the part of the respondent. Whereas, the evidence of the claimant is that, after completing her auction she travelled along with another person in the said auto, the auto driver had driven the same very close to the divider and thereby the claimant who was safely sitting inside of the auto in a proper manner, sustained injury, hence, the negligent act was on the part of the driver and his possession of valid license was also proved before the Tribunal. Hence, the finding of the Tribunal in fixing the negligence and liability on the part of the driver and the appellant/Insurance Company is very much proper.

13. Regarding the sum awarded by the Tribunal, it is observed that the claimant sustained grievous injury, which can be observed from Ex.P5-Accident Register. It is seen that the claimant sustained fracture injury in her right toe and in her 4^{th} and 5^{th} toes got grievous injury and she was also treated as inpatient for some period and even after proper treatment, she was continuing her treatment as out patient, Ex.P4-out patient receipt was also produced before the Tribunal. Ex.P5-Accident Register and Ex.P6-Wound Certificate, which reveals the surgery done to her. Inspite of effective treatment given to the claimant, it is stated that her 4^{th} and 5^{th} fingers in the right toe were amputated and that was very much deposed by the Doctor P.W.2, who has issued the disability certificate at 30% by way of Ex.P14. Hence, it is observed that the nature of injury

sustained by the claimant is very grievous in nature and surgery was done to her for 4th and 5th toe and the disability assessed by the Doctor at 30% is also very much proved before the tribunal.

14. On a perusal of the evidence and documents, it is observed that the claimant was a fish seller in a large quantity by way of auction and earning Rs. 200/- per day, hence the monthly income at Rs.1,000/- fixed by the Tribunal is very much reasonable. Accordingly, by considering her age, the Tribunal has awarded a sum Rs.30,000/- towards loss of income. The Tribunal has verified the medical expenses incurred by the claimant and awarded a sum of Rs.1,750/- based on Exs.P8, P9, P12 and P13 and awarded a sum of Rs.5,000/- for nourishment. Similarly, by taking the disability at 25% the sum awarded at Rs.25,000/- for disability is very reasonable by considering the nature of injury and treatment underwent by the claimant. Therefore, this Court is of the view that the compensation awarded by the tribunal at Rs.91,750/- is very much reasonable and proper.

15. Since, the findings given by the Tribunal were based on the evidence and documents, the sum awarded by the Tribunal is very much reasonable. No interference is called for in the order of the Court below. Hence, the order of the Tribunal is confirmed. This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

16. The appellant/Insurance Company is directed to deposit the entire award amount as awarded by the Tribunal with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
   (Fast Track Court No.2)
   Cuddalore.

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

+1cc to Mr.J.Raja Kalifulla, Advocate sr.74635

CMA.No.2731 of 2005

cp(co)
nr 22/10/2019