

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3082 of 2007
and
M.P.No.1 of 2007
and
Cross.Objection No.141 of 2011

C.M.A.No.3082 of 2007 in

M/s. United India Insurance Co. Ltd
Cuddalore N.T. ... Appellant

..Vs..

1. Ramesh
2. Parthibhan
3. Ramasamy
(2 and 3 were ex-parte in the Lower Court) ... Respondents

Cross.Objection No.141 of 2011 in
Ramesh Petitioner

..Vs..

1. United India Insurance Co. Ltd,
Cuddalore.
2. Parthiban
3. Ramasamy

...Respondents

PRAYER in CMA.No.3082 of 2007: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 04.04.2007 in MCOP.No.444 of 2004, on the file of the Motor Accident Claims Tribunal (Additional Subordinate Judge), Cuddalore.

PRAYER in Cross Objection No.141 of 2011: Appeal filed under Order XLI Rule 22 of the Code of Civil Procedure, to set aside the orders of tribunal in M.C.O.P.No.444 of 2004, dated 04.04.2007.

For appellant in
CMA.No.3082/2007 & R-1
in Cross Objection No.141/2011: Mr.P.Sankaranarayanan
and Mr.K.S.Narasimhan

For R-1 in CMA.No.3082/2007
& Cross Objector in
Cross Objection No.141/2011 : Mr.V.R.Annagandhi

: R2 & R3 - Exparte

COMMON JUDGMENT

The appellant in C.M.A.No.3082 of 2007 is the United India Insurance Company Limited, Cuddalore. The first respondent/claimant in C.M.A.No.3082 of 2007 has filed the Cross Objection No.141 of 2011

2. The brief case of the first respondent/claimant is as follows:

On 05.10.2003, the first respondent/claimant was riding his Ambassador Car bearing registration No.TN01-8769 from Chennai to Pondicherry. At about 4.00 P.M, when the car was nearing Olakkur, Konerikuppam Main Road, a speeding car bearing registration No.TN-22-P-9001 hit the car in which the first respondent/claimant was travelling and the first respondent/claimant sustained injuries.

3. According to the first respondent/claimant, he was a building contractor earning a sum of Rs.10,000/- per month, on the date of the accident. His further contention is that the rash and negligent driving of the driver of the car, bearing Registration No.TN-22-P-9001 was cause of the accident and that since the said car was insured by the United India Insurance Company Limited, both of them are jointly and severally liable to pay compensation of Rs.10,00,000/- to the claimant.

4. The respondents 1 and 3 in M.C.O.P.No.444 Of 2004 remained absent and were set ex-parte before the trial Court. The second respondent/appellant contested the claim petition by filing a counter.

5. The trial Court after analysing the evidence on record, awarded a compensation of Rs.5,14,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit to the first respondent/claimant. Aggrieved over the quantum of compensation awarded by the tribunal, the United India Insurance Company Limited has filed the present appeal in C.M.A.No.3082 of 2007 and the first respondent/claimant filed

Cross Objection No.141 of 2011 for the injuries sustained by the first respondent/claimant.

6. The learned counsel appearing for the appellant would contend that except a copy of the Accident Register (Ex.P.4), no other document was filed before the tribunal to show that the first respondent/claimant sustained a fracture on his left hip. The specific contention is that even in the copy of the Accident Register (Ex.P.4) there is a question mark put before the fracture of left hip. He also drew the attention of this Court to the chief examination of the first respondent/claimant (PW1) in which, he has clearly stated that he took treatment in a Government Hospital and subsequently took native treatment at Puthur. In the absence of medical records the tribunal was completely wrong in awarding a compensation of Rs.5,14,000/- together with interest at the rate of 7.5% per annum to the first respondent/claimant.

7. Dr.Venugopal(PW2) has assessed partial permanent disability as 65% based on the Accident Register (Ex.P.4) and two old X-rays. It is shocking to note that Dr.Venugopal(P.W.2) even without ascertaining the medical records had assessed the partial permanent disability as 65% and the learned Additional Subordinate Judge, Motor Accident Claims Tribunal, Cuddalore has fixed the partial permanent disability as 50% without any medical records. On top of it, the tribunal has adopted multiplier method and awarded a sum of Rs.5,14,000/- for partial permanent disability sustained by the first respondent/claimant. This is not a case, where there is functional disability. Therefore, the multiplier method adopted by the tribunal is totally unwarranted.

8. A perusal of the Accident Register (Ex.P.4) clearly shows that the injuries sustained by the first respondent/claimant are simple nature and in the facts and circumstances of the present case, the first respondent/claimant is entitled to a sum of Rs.25,000/- together with interest at the rate of 7.5% per annum. It is brought to the notice of this Court, the Insurance Company has already deposited the entire award amount and the first respondent/claimant has withdrawn 50% of the award amount with interest at the rate of 7.5% per annum.

9. The United Insurance Company is entitled to withdraw the balance 50% of the award amount from the account of the concerned tribunal. The United India Insurance Company is also entitled to recover the balance amount from the first respondent/claimant together with interest at the rate of 7.5% per annum, on the same cause of action.

10. In the result,
(i) the Civil Miscellaneous Appeal filed by the United India Insurance Company Limited is allowed. No costs.
(ii) and the Cross Objection is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

ssi/dna
To

1. The Motor Accidents Claims Tribunal,
Additional Subordinate Judge, Cuddalore.

2. The Record Keeper
VR Section, High Court, Madras 104.

+1 CC to Mr.V.R.Annagandhi, Advocate sr 84326.

C.M.A.No.3082 of 2007
and
M.P.No.1 of 2007
and
Cross.Objection No.141 of 2011

GP(CO)
SP(19/07/2019)

सत्यमेव जयते

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