IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2018

Coram

THE HON'BLE MR. JUSTICE S. BASKARAN

C.M.A.No.113 of 2016

and C.M.P.1057 of 2016

The Branch Manager
M/s United India Insurance Co.LTd.,
Branch Office,
P.R.Sundaram Street, Dharmapuri.

... Appellant/Respondent II

Versus

1.Mr. Munusamy ... 1st Respondent/Petitioner

2.Mr.S.Palanisamy ... 2nd Respondents/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and Judgment passed in M.C.O.P.No.1602 of 2014, dated 19.02.2015 (Special Subordinate - Judge) at Dharmapuri District.

For Appellant : Mr. J.Chandran

For Respondents : Mr.D.Ramesh Kumar for R1

J U D G M E N T

The Appellant-Insurance company has come forward with this appeal seeking to set aside the decree and Judgment passed in M.C.O.P.No.1602 of 2014, dated 19.02.2015, Special Subordinate Court, at Dharmapuri District.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the tribunal.

3. The case of the petitioner in MCOP.No.1602 of 2014 is that on 31.05.2012 at 01.00 p.m when the petitioner-Munusamy was proceeding in his two wheeler bearing Reg.No.TN-29-AH-9796, near Sekarapadi Railway gate, an auto bearing TN-29-AD-5698 came in the opposite direction at high speed and dashed against the petitioner, causing him fracture and grievous injuries in his right wrist and right forearm. According to the Petitioner, the

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accident occurred only due to negligence of the first respondent vehicle driver. At the time of accident, the petitioner was aged about 40 years and he was earning Rs.6000/- per month by working as a agricultural cooly. Due to injuries suffered by him, he is not able to do any work. Hence the petitioner seeks a sum of Rs.5,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand opposing the claim of the petitioner, the second respondent by filing counter contends that the accident does not occur in the manner alleged by the petitioner. On 31.05.2012 at 13:00 hours, auto bearing Reg. No. TN-29-AD-5698 was proceeding in Sekarapatti Railway Gate and at that time the two wheeler bearing Registration No.TN-29-AH-9796 was driven by the petitioner and when he suddenly crossed the main road from east to west, without noticing the oncoming auto, dashed against the auto, resulting in the accident, in the impact, the petitioner suffered injuries. The accident occurred only due to negligence of the petitioner and the first respondent auto was not insured with the second respondent at the time of the accident. Hence, the second respondent seeks dismissal of the petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and Medical Expert as P.W.2 and produced Ex.P.1 to Ex.P.6 documents to prove his claim. 1st respondent remained exparte. On the 2nd respondent side, no oral evidence was let in, only Exhibit R1 was marked. The Tribunal on the basis of available materials, held that the negligence of the first respondent vehicle driver was the cause for the accident and awarded a sum of Rs.3,36,000/- as compensation to the petitioner. However, as the driver of the first respondent vehicle was not having valid driving license but the auto was covered under the Insurance Policy with the second respondent, the Tribunal directed the second respondent Insurance company to satisfy the award and to recover the amount from the first respondent/owner. Being aggrieved from the said findings of the Tribunal, the second respondent- Insurance company has come forward with the present appeal.

6. The learned counsel for the appellant-Insurance company contends that the Tribunal ought to have held that the negligence of the petitioner alone caused the accident. The Tribunal failed to consider Exhibit R.1 properly and failed to fix the negligence on the part of the petitioner who caused the accident. The Tribunal ought to have disbelieved the medical expert and fixed the disability at the lesser percentage. The amount awarded by the Tribunal under different heads is on higher side. Hence the second respondent- Insurance company seeks to entertain the appeal and to set aside the award passed by the Tribunal.

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7. Per contra, the learned counsel for the injured petitioner contends that the Tribunal after considering the available evidence on record has awarded just and fair compensation and the same needs no interference. Thus, the petitioner seeks dismissal of the appeal.

8. The petitioner who deposed as P.W.1 clearly stated that on 31.05.2012 at about 01.00 p.m while he was proceeding in his two wheeler, the auto belonging to the first respondent came at high speed and dashed against the two wheeler resulting in the accident. The police also registered the case against the driver of the first respondent vehicle only. Based on the oral evidence of P.W.1 and contents of Ex.P.1-FIR, the Tribunal held that the negligence on the part of the first respondent driver alone is the cause for the accident.

9. The learned counsel for the appellant-Insurance Company submits that to rebut the claim of the petitioner, R.W.1 Rough sketch was marked by the 2nd respondent and the same was not considered by the Tribunal.

10. While considering the submissions raised on both sides, it is seen that the documents produced by the Petitioner was not cross examined by the 2nd respondent and the first respondent auto driver did not come forward to give the version of the accident. Therefore, there is no eyewitness on the side of the 2nd respondent before the Tribunal. As such, it is clear from the evidence of P.W.1 and the contents of Ex.P.1- FIR, that the accident occurred only due to negligence on the part of the first respondent vehicle driver.

11. Before the Tribunal, it is pointed out by the second respondent that the driver of the auto belonging to the first respondent did not possess valid driving license at the time of accident. The petitioner produced copy of the Insurance policy as Ex.P.3 and it is evident from that the first respondent auto was insured with the second respondent at the time of accident. The driving license of the driver of the said auto was not produced and as such taking into consideration the available materials on record, this Court finds no reason to interfere with the finding of the Tribunal in respect of negligence aspect. Though the driver of the first respondent did not possess valid driving license, the same amounts to violation of policy condition only. Hence the second respondent is entitled to recover the award amount from the first respondent after satisfying the award.

12. The petitioner stated that he suffered grievous injuries in the accident and produced Ex.P.2-Copy of the Accident Register and he also filed Ex.P.4-Discharge summary. According to him, he suffered the following injuries.

"(i)Abrasion Over (R) Arm (ii) Contusion over(R) forearm (iii)

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Contusion over(R) Knee(R) forearm (iv) Lacerated wound over(R) hand."

It is clear from Ex.P.4-discharge summary that the petitioner took treatment from 20.06.2012 to 30.06.2012. The Doctor who issued Exhibit P.5 disability certificate stated that on physical assessment he found that the petitioner has suffered fracture in his right hand wrist and undergone surgery for correcting it. Due to injuries suffered by him, the movement of the wrist is restricted. In view of the same, the petitioner yet finds difficulty in lifting the articles. Thus, P.W.2 Doctor assessed the disability suffered by the petitioner at 45% and he produced the permanent disability certificate as Ex.P.5. However, the Tribunal fixed the functional disability at 40%. The petitioner stated that he was earning Rs.6000/- per month, however, he has not produced any evidence to prove his income. Hence, Tribunal fixed the notional income of the petitioner at Rs.4,000/- instead of Rs.6,000/- per month. Further, the Tribunal applied Multiplier Method by taking multiplier of '15' and arrived at compensation of Rs.2,88,000/- towards "Permanent disability". This court while confirming the monthly income fixed by the Tribunal at Rs.4000/- is not inclined to accept the multiplier method adopted by the Tribunal. Following the Ruling of this court reported in (i) 2017 (1) TNMAC 251,[P.Elangovan Vs. S.Murali and others] and (ii) 2013(2)TN MAC 669, [M.Thirunavukkarasu Vs. P.T.S.M.Dhasthagir and 2.National Insurance Company Ltd., this court is of the considered view that the Tribunal is not justified in reducing the disability suffered by the petitioner. Therefore, the disability suffered by the Petitioner is fixed at 45% and Rs.3000/- per percentage of disability is awarded as compensation. Therefore, the compensation towards permanent disability is now fixed at Rs.1,35,000/- (Rs. 3,000x45), instead of Rs.2,88,000/- fixed by the Tribunal.

13. Considering the overall materials on record and the attendant circumstances of this case, this Court is inclined to enhance the compensation towards "Pain and suffering" from Rs.15,000/- to Rs.20,000/-; "Loss of income during the period of treatment" from Rs.8000/- to 12,000/-; "Medical expenses" from 5,000/- to 10,000/-; under the head "Nutrition" from Rs.5,000/- to 15,000/-. Hence for the above said reasons the award passed by the Tribunal is modified as follows:-

Sl.No	Particulars	Amount granted by the Tribunal	Amount awarded by this Court
1	Permanent disability	Rs.2,88,000/-	Rs.1,35,000/-
2	Pain and suffering	Rs.15,000/-	Rs.20,000/-

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Sl.No	Particulars	Amount granted by the Tribunal	Amount awarded by this Court
3	Loss of Income during the period of treatment	Rs.8,000/-	Rs.12,000/-
4	Transport charges	Rs.5,000/-	Rs.5,000/-
5	Nutritional charges	Rs.5,000/-	Rs. 15,000/-
6	Mental Agony	Rs.10,000/-	Rs.10,000/-
7	Medical expenses	Rs. 5,000/-	Rs.10,000/-
	Total	Rs.3,36,000/-	Rs.2,07,000/-

14. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is reduced from Rs.3,36,000/- to Rs.2,07,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) This Court, by order dated 17.03.2017, directed the appellant/Insurance Company to deposit the entire award amount. Therefore, the appellant-Insurance company shall deposit the entire modified award amount, if not already deposited along with accrued interest within a period of four weeks from the date of receipt of a copy of this order. The appellant-Insurance company is also permitted to withdraw the excess amount, if any lying in deposit, after satisfying the award.

(iv) On such deposit, the injured Petitioner/1st respondent is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(v) There will be no order as to costs in this appeal.

(vi) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Court, Dharmapuri.

2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.J.Chandran, Advocate SR.No.16199
+1cc to Mr.D.Ramesh kumar, Advocate SR.No.16085

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