

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.868 of 2018
and CMP.No.7192 of 2018

The United India Insurance Co Ltd
No.19, Neela South Street
Nagappattinam,
rep. By its Branch Manager

...Appellant/
2nd respondent.

Vs.

1.Annadurai

..Respondent No.1
/Petitioner

2.Suresh

..Respondent No.2
/Respondent No.1.

Civil Miscellaneous Appeal filed u/s. 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 27.06.2006 passed in M.C.O.P.No.543 of 2004 on the file of Motor Accidents Claims Tribunal, District Court, Tiruvarur.

For appellant : : Mr.T.Ravichandran
for Respondents : : Mr.S.Umapathy for R1.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company, challenging the judgment and decree dated 27.06.2006 passed in M.C.O.P.No.543 of 2004 on the file of Motor Accidents Claims Tribunal, District Court, Tiruvarur.

2. Though M.P.No.1 of 2008 in CMA.SR.No.102133 of 2006 has been filed on 26.02.2007 with 13 days delay and notice was ordered by this court on 13.02.2008, the same has been listed after service of notice on 10.04.2018 only. Therefore, the matter is taken up for final hearing and disposal.

3. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The Petitioner averments in his Claim Petition MCOP.No.543 of 2004 is that on 24.09.2003, at 9.45 a.m., while he was going in a two wheeler bearing Reg.No.TN-55-A-6814, at Thoppadi Thidal, near Vinayagar Temple at Thiruthuraipoondi in

normal speed, the 1st respondent driving his two wheeler bearing Reg.No.TN-51-B-5683 came at high speed in opposite direction, dashed against the two wheeler which the petitioner was riding, causing him grievous multiple bone fracture and crush injury. The Petitioner was aged 32 years and by working as Agriculturist and Fish Pond Sub Contractor, was earning Rs.7,000/- per month. According to the Petitioner, due to the injuries suffered by him he is not in a position to attend to his work. The Petitioner therefore, claimed compensation of Rs.5,00,000/-.

4. By filing counter, the 2nd respondent/Insurance company contends that the accident did not occur in the manner alleged by the Petitioner. It is only due to the negligence of the Petitioner himself, the accident occurred. The claim of the Petitioner is exorbitant. Thus the 2nd respondent sought for dismissal of the claim Petition.

5. Before the Tribunal, the Petitioner examined himself as P.W.1 and the medical expert as P.W.2 and P.W.3, produced documents Ex.P.1 to Ex.P.14 to prove his claim. On the side of the 2nd respondent, R.W.1 and R.W.2 was examined and documents Ex.R.1 and Ex.R.2 was produced to counter the claim of the Petitioner.

6. On careful analysis of the evidence available on record, the Tribunal found that the rider of the 1st respondent two wheeler alone caused the accident and awarded compensation of Rs.1,22,730/- payable by the respondents 1 and 2 to the Petitioner. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance company has come forward with the present appeal.

7. The learned counsel for the appellant/Insurance company contended that the Tribunal failed to appreciate the evidence properly and wrongly fixed the negligence on the 1st respondent driver. The fact that the Petitioner as well as 1st respondent did not possess driving licence and there was no insurance policy for the claimant's vehicle was not considered by the tribunal. The medical evidence let in by the Petitioner was not considered properly and disability was fixed at higher level. The monthly income fixed by the Tribunal as well as the amount awarded under various heads are highly excessive. Thus, the 2nd respondent/Insurance company sought for setting aside the award passed by the Tribunal, by allowing the appeal.

8. The learned counsel for the Injured petitioner contends that the Tribunal after taking into consideration the facts and circumstances of the case and analysing thoroughly the evidence let in by both sides, concluded that the 1st respondent rider's negligence only caused the accident and therefore, the said

conclusion needs no interference. Thus the learned counsel for the Petitioner sought for dismissal of the appeal.

9. Heard both sides and perused the records carefully.

10. The only contention raised by the appellant counsel is that there was no valid driving licence for the Petitioner/1st respondent and the quantum of the award granted by the tribunal is excessive.

11. The Tribunal, on the basis of P.W.1 evidence as well as Ex.P.1-FIR contents found that the negligence of the 1st respondent two wheeler rider alone caused the accident. Before the Tribunal, the 1st respondent has not come forward to give evidence to contradict the claim of the Petitioner. Even though the 2nd respondent examined R.W.1 and R.W.2 and produced documents Ex.R.1-Insurance Policy and Ex.R.2-Investigation Report, there is nothing on record to show that there was negligence on the part of the Petitioner, resulting in the accident. It is clear from Ex.P.9-MVI Report that there was no mechanical defect in the vehicles involved in the accident. As such, the finding of the Tribunal that the negligence of the 1st respondent vehicle rider alone caused the accident is confirmed.

12. As far as the contention of the appellant regarding no driving licence for the 1st respondent is concerned, it is clear from the evidence of R.W.2 and Ex.R.1-Insurance Policy that the 1st respondent vehicle bearing Reg.No.TN-51-B-5683 was insured with the 2nd respondent. Thus, the offending vehicle was having Policy Coverage on the date of the accident. Even though R.W.2 stated that the 1st respondent was not having valid driving licence on the date of the accident, no steps was taken to examine the official from RTO Office. As such, the Tribunal found the claim of the 2nd respondent that the 1st respondent driver was not having valid driving licence is not proved. The said conclusion arrived at by the Tribunal is just and proper.

13. The Petitioner claims that he was aged 32 years at the time of the accident and suffered multiple bone fracture in right frontal bone; crush injury and bone fracture in right foot. After taking first aid treatment in Thiruthuraipoondi, the petitioner states that he was sent to Medical College Hospital, Thanjavur, for further treatment and he was treated as inpatient for three days. Thereafter, he took treatment in the Private Hospital in MVK Nursing Home for 12 days and thereafter took eye treatment at Madurai Aravindhan Eye Hospital. P.W.2 doctor deposed that due to the injury suffered in the eyes, the petitioner's vision is affected. The Petitioner states he is having frequent chest pain and is unable to attend to his work. Ex.P.4 Wound certificate shows that the petitioner suffered two grievous injuries. P.W.2 doctor also stated that the petitioner

is having difficulty in standing, walking for long time and feel pain in his right leg and is unable to carry out his day to day work normally. The doctor assessed 20% disability for the injuries suffered by the Petitioner based on Ex.P.13-X ray. The disability certificate issued by doctor is Ex.P.12. Another doctor P.W.3 assessed the disability at 30% and the disability certificate produced by him is Ex.P.14. The Tribunal, based on the above oral and documentary evidence fixed 50% functional disability and adopted multiplier method to arrive at compensation. The Tribunal fixed the notional monthly income of the Petitioner at Rs.1500/- as he was an agriculturist and doing fish pond contractor work and by applying multiplier 17 for the age of 32, awarded Rs.1,02,000/- as compensation for loss of earning due to disability. The said compensation award amount appears to be just and reasonable and hence, the same is confirmed.

14. Likewise keeping in mind, the nature of injury suffered by the Petitioner and also Ex.P.7, Ex.P.8 Medical bills produced, the Tribunal awarded Rs.13,730/- towards medical expenses. Further, the Tribunal awarded Rs.5,000/- towards Pain and suffering and Rs.2000/- towards nutrition food. The award of the Tribunal under various heads is as follows:-

Sl.No	Heads	Amount awarded by the Tribunal
1.	Loss of income due to disability	Rs.1,02,000/-
2.	Medical expenses	Rs. 13,730/-
3.	Pain and suffering	Rs. 5,000/-
4.	Nutrition food	Rs. 2,000/-
	Total	Rs.1,22,730/-

15. This court is of the considered opinion that the quantum of the award passed by the Tribunal is just and proper and the same needs no interference. The contention of the Appellant-Insurance company about the 1st respondent not possessing valid driving licence and disability assessed by the Petitioner is on the higher side is not based on acceptable material and therefore, the arguments advanced by the Appellant counsel is rejected.

16. In view of the foregoing reasonings, the appeal is devoid of merits and fails at the stage of admission itself. In the result,

(i) The Civil Miscellaneous Appeal is dismissed.

(ii) The appellant-Insurance company is directed to deposit the award amount of Rs.1,22,730/- [Rupees One Lakh Twenty two thousand seven hundred thirty only] with 7.5% interest per

annum from the date of petition till the date of realisation.

(iii) The appellant/Insurance company is directed to deposit the award amount along with accrued interest and cost within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the 1st respondent/Petitioner is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs. Consequently, connected CMP is closed.

Sd/--

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The District Judge, Tiruvarur
Motor Accident Claims Tribunal.

+1cc to Mr.Ravichandran, Advocate Sr.No.30601

+1cc to Mr.Balu, Advocate SR.No.30540

MG(CO)

sm:13.6.2018

C.M.A.No.868 of 2018

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