

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.648 of 2008

M/s.United India Insurance Co. Ltd.,
Motor Vehicle 3rd Party Cell,
No.38, Anna Salai, III Floor,
Chennai - 2

... Appellant/R2

..Vs..

1.B.Sathish Kumar R1/ Petitioner

2.P.M.Balan Respondent 2/Respondent 1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree made in MCOP. No.282 of 2004 on the file of the Motor Accident Claims Tribunal (Sub Court) Poonamallee, dated 29.12.2006.

For Appellant : Mrs.N.Mala
For Respondent 1 : Mr.C.Prabhakaran
For Respondent 2 : No appearance

J U D G M E N T

The instant appeal has been filed by the insurance company challenging the Award passed by the Motor Accident Claims Tribunal, (Sub Court) Poonamallee in its Judgment and decree dated 29.12.2006 passed in MCOP. No.282 of 2004.

The brief facts leading to the filing of the instant appeal are as follows.

2. The first respondent/Claimant was a pillion rider on the pulsar motor cycle bearing registration No.TN20-R-5650 which was owned and driven by the second respondent and insured with the Appellant, which dashed against a TVS XL Super coming from the side road on 14.04.2004 at about 5.20 p.m. and due to the said accident, the first respondent sustained injuries. The first respondent preferred a claim for compensation against the

Appellant as well as the second respondent before the Motor Accident Claims Tribunal, Sub Court, Poonamalle in MCOP. No.282 of 2004. The Motor Accident Claims Tribunal by its Judgment and Decree dated 29.12.2006 directed the Appellant to pay the first respondent a sum of Rs.6,20,340/- together with interest at 7.5% per annum from the date of claim till the date of realisation.

3. Aggrieved by the Judgment and decree dated 29.12.2006 passed in MCOP. No.282 of 2004, the instant appeal has been filed by the Appellant/Insurance Company.

4. Heard Mrs.N.Mala, learned counsel for the Appellant and Mr.C.Prabhakaran, learned counsel for the first respondent/Claimant.

5. According to the learned counsel for the Appellant, the Tribunal ought to have exonerated the Appellant, since the second respondent who is the owner of the vehicle committed fraud by colluding with his employee and by suppressing the material facts about the accident. According to the learned counsel for the Appellant, the first respondent/claimant himself drove the vehicle and caused the accident and the owner who is the father of the first respondent/claimant colluded with his employee one Sudhakar Rao and filed the First Information Report belatedly as if the first respondent/claimant was a pillion rider.

6. According to the learned counsel for the Appellant, since the first respondent/claimant was himself a tortfeasor, he is not entitled for any compensation under Section 166 of the Motor Vehicles Act, 1988. Further, the learned counsel for the Appellant would contend that the Tribunal was erred in awarding double compensation of Rs.80,000/- towards permanent disability and Rs.2,00,000/- for loss of earning capacity which is against the judgment of the Full Bench of this Court.

7. Per contra the learned counsel for the first respondent/Claimant would submit that on account of accident, the first respondent/Claimant has suffered permanent disability and he has totally paralysed and has also suffered severe head injuries. According to the learned counsel for the first respondent, the contention of the learned counsel for the Appellant that the first respondent has colluded with the second respondent and played fraud upon the Appellant is absolutely false. The Appellant has not been able to establish that fraud was played on the first respondent. According to the learned counsel for the first respondent, the compensation awarded by the Tribunal in favour of the first respondent is in accordance with law.

8. This Court after considering the materials available on record and after hearing the submissions of the respective counsel, observes the following:

a) After perusing and examining the award which is the subject matter of challenge, this Court finds that no sufficient evidence has been placed by the Appellant to prove that the first respondent/claimant has colluded with the second respondent and played fraud upon the Appellant by lodging a false claim.

b) The compensation awarded by the Tribunal considering the nature of injuries suffered by the first respondent is also a reasonable and just one. Even though the first respondent may not be entitled for Rs.50,000/- under the head pain and suffering, the first respondent has been awarded only a sum of Rs. 1,000/- towards transportation costs and Rs.2,000/- towards extra nourishment cost and Rs.2,87,340/- towards reimbursement of medical expenses.

c) It is an admitted fact the first respondent had to be hospitalised for two months on account of injuries suffered by him due to accident. The Tribunal has also not awarded any amount towards future medical expenses and attender charges, considering the permanent disability of the first respondent.

9. Considering all these factors, this Court is of the considered view that the compensation awarded by the Tribunal is a just compensation which cannot be interfered with in this appeal. Therefore there is no merit in the instant appeal. Accordingly, the appeal is dismissed, the first respondent is permitted to withdraw the compensation amount deposited by the Appellant before the Motor Accident Claims Tribunal lying to the credit of MCOP. No.282 of 2004 on the file of the Motor Accident Claims Tribunal(Sub Court) Poonamallee by filing appropriate application. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VII)

//True Copy//

WEB COPY
Sub Assistant Registrar

To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal,
Poonamallee.

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

+1cc to Mr.C.Prabakaran, Advocate Sr.56757

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