

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.12.2018

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2862 of 2018
and C.M.P.No.21800 of 2018

United India Insurance Co. Ltd.,
No.178, Ist floor
Dr.Nagappa salai
Coimbatore-18.

.. Appellant/2nd Respondent

vs.

1.Muthusamy
2.Dhanapalan

.. Respondents/Petitioner & Respondent

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 13.11.2017 made in M.C.O.P.No.583 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

For Appellant : Mr.C.Paranthaman
For R1 : Mr.C.Kulanthaivel
For R2 : Mr.Deepan Uday

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award dated 13.11.2017 made in M.C.O.P.No.583 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

2.The appellant/Insurance Company is second respondent in M.C.O.P.No.583 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari. The first respondent/claimant filed the above claim petition claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 31.05.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by both the rider of the motorcycle/first respondent as well as the driver of the car belonging to the second respondent and fixed 20% contributory negligence on the part of the first respondent and 80% contributory negligence on the part of the driver of the car belonging to the second

respondent and awarded a sum of Rs.3,95,000/- as compensation to the first respondent and directed the appellant, who is insurer of the second respondent, to pay 80% of the award amount i.e., Rs.3,16,000/- (rounded off to Rs.3,20,000/-) as compensation to the first respondent.

4. Against the said award dated 13.11.2017 made in M.C.O.P.No.583 of 2010, the appellant/Insurance Company has come out with the present appeal challenging the liability fastened on them as well as the quantum of compensation awarded by the Tribunal.

5. The learned counsel appearing for the appellant/Insurance Company contended that the accident occurred only due to rash and negligent riding by the first respondent/claimant. Even though F.I.R. was lodged against the driver of the car belonging to the second respondent, the same was closed as mistake of facts. At the time of accident, the first respondent was in a drunken mood and the appellant substantiated the same by examining R.W.3/Doctor, who deposed that the first respondent was smelling alcohol. In the Accident Register also, it was mentioned that the first respondent was smelling alcohol. The Tribunal without considering the above facts held that the driver of the car belonging to the second respondent is responsible for the accident. The Tribunal considering the evidence let in by the appellant and the documents filed with regard to drunk and drive by the first respondent, erroneously directed the appellant to pay 80% of the award amount and the Tribunal ought to have exonerated the appellant from its liability. The learned counsel appearing for the appellant further contended that the Doctor has certified that the first respondent suffered 27% disability and the Tribunal instead of granting compensation on percentage basis, erred in awarding compensation by applying multiplier method. The Tribunal failed to see that there was no functional disability suffered by the first respondent and the first respondent has not proved that he is unable to do any work as he was doing earlier. The Tribunal having awarded compensation for disability suffered by the first respondent by applying multiplier method, erred in granting further compensation of Rs.50,000/- towards simple injuries, which amounts to double the compensation without any evidence. The Tribunal has awarded a sum of Rs.20,000/- towards future medical expenses without any document. Therefore, he prayed for setting aside the award of the Tribunal.

6. Per contra, the learned counsel appearing for the first respondent contended that the first respondent has let in evidence to prove that the accident occurred only due to rash and negligent driving by the driver of the car. Smelling of alcohol will not be a reason for holding that the first

respondent was responsible for the accident. The appellant has not let in any evidence to show that the first respondent was in an inebriated mood and unstable at the time of accident and contributed negligence for the accident. The Tribunal considering the nature of injuries and disability suffered by the first respondent, has rightly applied multiplier method. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

7.The learned counsel appearing for the second respondent contended that the accident occurred only due to negligence on the part of the first respondent and the driver of the car belonging to the second respondent was not responsible for the accident and in any event, the vehicle was insured with the appellant and if any compensation is payable to the first respondent, the appellant is only liable to pay the same.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 and 2 and perused the materials available on record.

9.From the materials available on record, it is seen that the appellant has not let in any acceptable evidence to substantiate their case that the first respondent was drunk and unstable at the time of accident, he drove the motorcycle in a rash and negligent manner and dashed against the car. The Doctor examined by the appellant in his cross-examination has admitted that no blood test was conducted on the first respondent in the hospital to find out the level of the alcohol in his blood. R.W.2 is a private investigator. The Tribunal did not accept the evidence of R.W.2. The Tribunal considered the fact that in the impact of the accident, first respondent was thrown out of the motorcycle and held that if the driver of the car has driven the car at moderate speed following the traffic rules, the impact would not have been so severe. There is no error in the said reason given by the Tribunal for holding that 80% negligence is on the part of the driver of the car and the same is hereby confirmed.

10.As far as quantum of compensation is concerned, considering the nature of disability, injury and nature of work of the first respondent, the Tribunal applied multiplier method for granting compensation towards permanent disability. The Tribunal considering the disability suffered by the first respondent by giving reasons, concluded that the first respondent could not do any work as he was doing earlier. The Tribunal considering the fact that the left leg of the first respondent below knee was amputated and artificial leg was fixed, awarded a sum of Rs.20,000/- towards future medical expenses, which is in order. The Tribunal awarded a sum of

Rs.50,000/- towards two simple injuries, after awarding compensation towards permanent disability by applying multiplier method and the said amount is hereby set aside. A sum of Rs.5,000/- granted towards damage to clothes is hereby reduced to Rs.1,000/-. The amounts awarded by the Tribunal under all the other heads are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	2,55,000	2,55,000	Confirmed
2.	Medical expenses	5,000	5,000	Confirmed
3.	Pain and suffering	30,000	30,000	Confirmed
4.	Transportation	5,000	5,000	Confirmed
5.	Extra nourishment	20,000	20,000	Confirmed
6.	Attendant charges	5,000	5,000	Confirmed
7.	Simple injuries	50,000	-	Set aside
8.	Future medical expenses	20,000	20,000	Confirmed
9.	Damage to clothes	5,000	1,000	Reduced
	Total	3,95,000	3,41,000	Reduced by Rs.54,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,95,000/- is hereby reduced to Rs.3,41,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/Insurance Company is directed to deposit 80% of the modified award amount (i.e. Rs.2,72,800/-) along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the

first respondent/claimant is permitted to withdraw the modified award amount along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.583 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Subordinate Judge, Sankari.

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

+1cc to Mr.Deepan Uday, Advocate, S.R.No. 86034

+1cc to Mr.C.Kulainthivel, Advocate, S.R.No. 85964

+2cc to Mr.C.Paranthaman, Advocate, S.R.No. 85738

C.M.A. No.2862 of 2018

SR(CO)
GN(13/02/2019)

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