

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2801 of 2018
and C.M.P.No.21324 of 2018

Magma HDI General Insurance Company Limited
Magma House, 24, park street
Kolkata-700 016.

.. Appellant/R2

Vs.

1.K.Palanisamy ..R1/Petitioner
2.Abdur Rasid Mallick

.. R2/R1

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.04.2018 made in M.C.O.P.No.2753 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Salem.

For Appellant : Mr.S.Arun Kumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 02.04.2018 made in M.C.O.P.No.2753 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Salem.

2.The appellant/Insurance Company is second respondent in M.C.O.P.No.2753 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Salem. The first respondent filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.10.2015.

3.According to the first respondent, on 21.10.2015, the driver of the lorry bearing Registration No.WB 41 H 0284 belonging to the second respondent drove the same in a rash and negligent manner and dashed against the two wheeler driven by the first respondent and caused the accident. Due to the said impact, the first respondent sustained grievous injuries and underwent surgery and he was in the hospital as in-patient from

22.10.2015 to 13.11.2015. Due to the accident, he could not do any work as he was doing earlier. The first respondent was aged 55 years at the time of the accident and was doing business and earning a sum of Rs.20,000/- per month. The accident occurred due to the rash and negligent driving by the driver of the first respondent and hence, the second respondent as owner of the lorry and appellant as its insurer are liable to pay the compensation to the first respondent.

4.The second respondent remained exparte. The appellant filed counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving by the driver of the lorry belonging to the second respondent. The accident occurred only due to the rash and negligent driving on the part of the first respondent, who drove the two wheeler in a rash and negligent manner and hit the back side of the lorry and caused the accident. Therefore, the appellant is not liable to pay the compensation and prayed for dismissal of the claim petition.

5. Before the Tribunal, the first respondent examined himself as P.W.1 and examined the Doctor as P.W.2 and marked fourteen documents as Exs.P1 to P14. The appellant examined the Sub-Inspector of Police as R.W.1 and marked the copies of F.I.R., Motor Vehicle Inspector's Report, rough sketch and final report as Ex.R1.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the lorry belonging to the second respondent and directed both the second respondent as well as the appellant to pay a sum of Rs.8,63,470/- as compensation to the first respondent, jointly and severally.

7.Against the said award dated 02.04.2018 made in M.C.O.P.No.2753 of 2015, the appellant/Insurance Company has come out with the present appeal challenging the liability as well as quantum of compensation awarded by the Tribunal.

8.The learned counsel appearing for the appellant contended that the accident occurred due to the rash and negligent driving by the driver of the lorry. The lorry cannot take U-turn suddenly and it is only the first respondent, who drove the two wheeler in a rash and negligent manner and caused the accident. The Tribunal has failed to consider the discrepancy in the manner of the accident alleged by the first respondent and ought to have dismissed the claim petition against the second respondent and appellant. The learned counsel for the appellant further contended that the percentage of disability certified by P.W.2/Doctor is exorbitant. P.W.2 has not annexed any working

sheet and guidelines and committed error in applying multiplier method for awarding compensation towards disability. The Tribunal has erred in accepting the percentage of disability certified by the Doctor. The Tribunal has also erred in awarding a sum of Rs.3,88,080/- towards loss of income in the absence of any evidence with regard to proof of earning and loss consequent to the accident and prayed for setting aside the award of the Tribunal.

9. Heard the learned counsel appearing for the appellant and perused the materials available on record.

10. From the materials available on record, it is seen that the first respondent as P.W.1 has deposed as to how the accident occurred and the nature of injuries and treatment taken by him. To substantiate his claim with regard to the injuries and percentage of disability, the first respondent has examined P.W.2/Doctor, who deposed with regard to the same and marked Ex.P12/disability certificate. The first respondent has also marked the accident register, medical bills and other documents with regard to the treatment taken by him. The appellant has not let in any evidence contrary to the evidence of P.W.1 with regard to the manner, in which the accident occurred. The appellant has not examined either the owner or driver of the lorry. Ex.P1/F.I.R. stood only against the driver of the lorry. The Tribunal considering the above facts, has held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the second respondent insured with the appellant. There is no error in the said findings of the Tribunal.

11. As far as the quantum of compensation is concerned, the Tribunal considering the evidence of P.W.2/Doctor and Ex.P12/disability certificate, held that the first respondent suffered grievous injuries, which is not disputed by the appellant. The contention of the first respondent that due to the nature of injuries, he is unable to do work is acceptable. For the above reason, the Tribunal has applied multiplier method to arrive at a compensation towards permanent disability and the same is just compensation. The Tribunal considering Ex.P11/medical bills, awarded compensation for medical expenses. The learned counsel appearing for the appellant has not substantiated as to how the medical bills are not properly proved. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

12. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. Both the appellant / Insurance Company as well as the second respondent are directed to deposit the award amount along with interest and costs jointly and severally, 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 is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

The Special Subordinate Judge No.I
The Motor Accidents Claims Tribunal
Salem

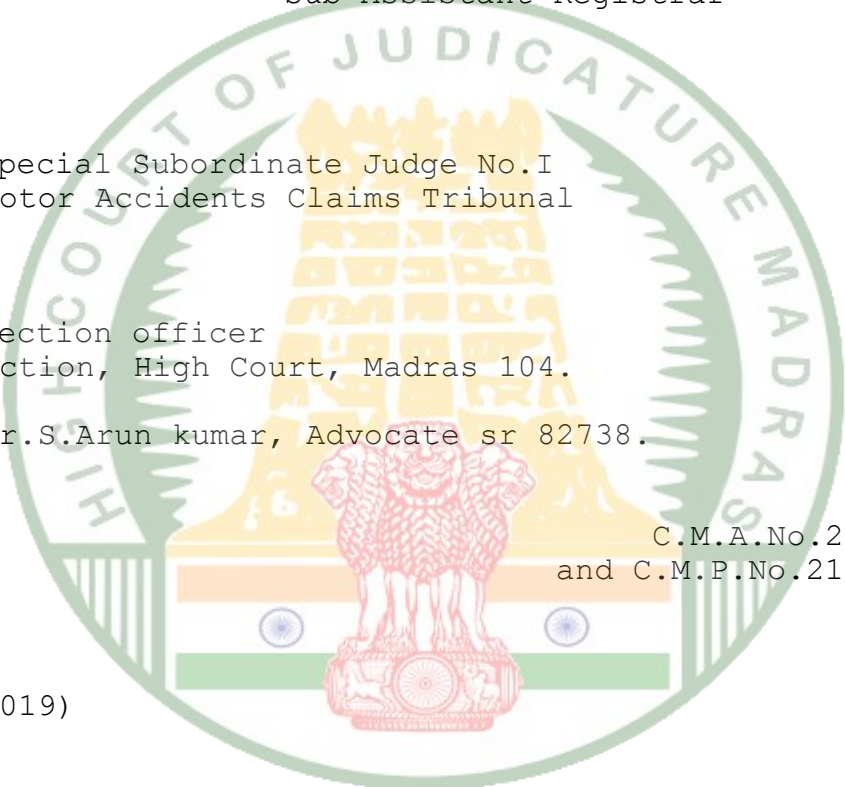
Copy to

The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.S.Arun kumar, Advocate sr 82738.

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EV (CO)
SP(11/02/2019)

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सत्यमेव जयते

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