



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2018

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.566 of 2017
and
CMP(MD) No.6035 of 2017

The Divisional Manager,
United India Insurance Company Limited,
Divisional Office - III,
No.4, Royal City,
Karur Bye-Pass Road,
Tiruchirappalli - 620 002.

... Appellant/ 2nd Respondent

Vs.

1.K.Kanagaraj

.. 1st Respondent / Petitioner

2.A.Pratheep

... 2nd Respondent/ 1st Respondent

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 07.12.2016, passed in M.C.O.P.No.2030 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tiruchirappalli.

For Appellant : Mr.I.Suthakaran
For Respondents : Mr.R.Subramanian - for R1
Mr.B.Jameelarasu - for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the award passed by the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Tiruchirappalli, in M.C.O.P.No.2030 of 2013, dated 07.12.2016.

2. Heard the learned Counsel appearing on either side and perused the records carefully.

3. It is a case of injury and the tribunal has awarded a sum of Rs.2,10,300/- as compensation, against which, the Appellant/Insurance Company is before this Court.

4. Though several grounds are raised in the memorandum of grounds, the main grounds on which the appellant Corporation has filed this appeal are on negligence and quantum.



5. The learned Counsel for the appellant submitted that the tribunal failed to note that the accident was occurred only due to rash and negligent driving of the injured and the injured has also admitted in his cross examination that the accident was occurred due to head on collusion of the vehicle involved in the accident and that the injured was solely responsible for the accident and therefore, the appellant is not liable to pay compensation to the first respondent.

6. The learned Counsel for the appellant would further submit that the accident has happened at the end of the extreme southern side of the road. When the petitioner was riding in his two wheeler, he can go to the extreme left side end of the road, but he is away from the left end and he himself has invited the accident and he would further submit that some contributory negligence has to be fixed against the claimant.

7. On a perusal of the records, it is seen that the FIR has been registered only against the driver of the 2nd respondent. It is seen that the tribunal, at paragraph Nos.6 to 9 of the judgment, has elaborately discussed the ground of negligence and has categorically held that the driver of the 2nd respondent invited the accident and the same does not warrant any interference at the hands of this Court.

8. Insofar as the quantum is concerned, the learned Counsel for the appellant contended that the tribunal while fixing compensation for the disability, has taken Rs.3,500/- per percentage of disability instead of Rs.3,000/- per percentage of disability.

9. The learned Counsel for the first respondent would submit that the disability assessed by the doctor is 44%. Based on the evidence of the doctor stating that the disability may reduce by 3%, the learned Judge has fixed the disability as 41% and has awarded Rs.3,500/- per percentage of disability. In my considered opinion, the Doctor has only said that the disability may reduce by 3%, but the doctor was not very sure that the disability will reduce by 3%. In my opinion, it would be appropriate to give Rs.3000/- per percentage of disability, as per the judgment rendered by this Court in the decision reported in 2013 (2) TN MAC 583, by fixing the disability at 44%. Therefore, the compensation under this head is reduced from Rs.1,43,500/- to Rs.1,32,000/- (44% X Rs.3,000/-), i.e., Rs.11,500/- is reduced towards disability.

10. Insofar as the other heads are concerned, it is seen that the tribunal, after considering all the aspects, has rightly awarded the compensation and therefore, the same does not deserve any interference.

11. The learned Counsel for the appellant would submit that the entire award amount has already been deposited before the



Tribunal and hence, the Tribunal is directed to refund the said amount of Rs.11,500/- with accrued interest, to the appellant/Insurance Company.

12. Accordingly, this civil miscellaneous appeal is allowed and

- the compensation awarded by the tribunal is reduced and the total award amount is fixed at Rs.1,98,800/- [Rs.2,10,300/- awarded by the tribunal - Rs.11,500/- reduced by this Court towards disability].
- Since it is represented before this Court that the appellant/Insurance Company has already been deposited the entire award amount before the Tribunal, the Tribunal is directed to refund the said amount of Rs.11,500/- with accrued interest, to the appellant/Insurance Company.
- the 1st respondent/claimant is permitted to withdraw the said award amount with interest @ 7.5% per annum from the date of claim petition, till the date of deposit and costs, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal.
- There shall be no order as to costs.
- Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruchirappalli,

COPY TO:

The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.I.Suthakaran, Advocate SR.No. 68871
+1cc to M/S.B.Jameelarasu, Advocate SR.No. 69052
+1cc to M/S.R.Subramanian, Advocate SR.No. 69124

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