IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.2989 of 2003
and CMP Nos.18385 & 18386 of 2003

United India Insurance Co. Ltd.,
Divisional Officer,
4 Gandhi Nagar, Coimbatore ... Appellant/2nd Respondent

..Vs..

1. Mani
2. S.Rajendiran ... Respondents/Petitioner, 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 28.02.2003, made in MCOP No.1110 of 1999 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruppur.

For Appellant : Mr. N.Vijayaraghavan

For Respondents : Mr. K.Govi Ganesan, for R-2.

J U D G M E N T

In respect of the grievous injuries sustained in an accident that took place on 14.11.1998 at about 17.20 hrs, the claimant / injured / first respondent herein, who was at the time of accident aged 40, a Building Contractor, earning a sum of Rs.4,000/- per month, has filed a claim petition, claiming a sum of Rs.5,00,000/- as compensation against the Insurer / appellant herein.

2. The claim was disputed by the respondent in the MCOP / Insurance Company on the ground that the claimant / injured / first respondent herein has to prove the rashness and negligence of the driver of the car independently; the age, health and occupation of the injured as a Building Contractor and the monthly income of Rs.4,000/- are denied and therefore, the Insurance Company was not liable to pay any compensation.

3. The Tribunal, on consideration of the materials placed before it, came to the conclusion that, apart from the allegations against the driver the averments stated in the First Information Report stand corroborated by the evidence of P.W.1-

Injured, and hence the liability is only on the part of the Insurance Company. Moreover, the Tribunal has also relied upon the evidence of Dr.Kanappan, who has given Disability Certificate to the injured and on a cumulative consideration has given a finding that the negligence is only on the part of the driver of the Car insured with the appellant herein and accordingly, awarded the compensation of Rs.4,93,897/- payable by the Insurance Company to the claimant / injured. Aggrieved against the same, the present Appeal is preferred by the Insurance Company.

4. The learned counsel for the appellant submitted that the Cover Note pertaining to the insurance of the disputed vehicle issued by the appellant was obtained by the second respondent herein / owner of the car only on 16.11.1998, i.e., after the accident, on 14.11.1998 and the correct particulars of the insurance could not be traced out at the time of trial; but it has now been confirmed that there was no insurance at the time of accident and hence the appellant ought to be exonerated from liability.

5. This Court is of the opinion that the appellant / Insurance Company has not taken such a specific defence before the Tribunal. Unless such a specific defence is taken by the Insurance Company in the counter, it is not open to them to contend at this stage of appeal that there was no insurance at the time of accident and therefore, the Insurance Company is not liable to pay compensation to the claimant. Hence, the said contention taken by the Insurance Company on the point of liability cannot be raised at this stage and therefore, it cannot be accepted at this distant point of time.

6. Added to the above, the insurance company to avoid liability must not only establish the available defence raised in the proceedings concerned, but must also establish breach on the part of the owner of the vehicle for which the burden of proof would rest with the insurance company. Whether such a burden had been discharged would depend upon the facts, breach on the part of the insured concerning a policy condition and the insurer would not be allowed to avoid its liability towards the insured unless the said breach of condition is so fundamental as to be found to have contributed to the cause of the accident. Hence, on this score also, the findings on negligence by the Tribunal are perfectly valid.

7. Next comes the quantum of compensation awarded by the Tribunal.

8. A perusal of the award passed by the Tribunal would go to show that the monthly income of the injured has been taken at Rs.3,500/- and the annual income has been assessed at Rs.42,000/-. Adopting the multiplier of 16 and 60% disability, as assessed by the Doctor, the loss of earning has been calculated at Rs.4,03,200/- Further, based on the medical bills, a sum of Rs.85,697.73 has been awarded for medical expenses. Towards loss of amenities a sum of Rs.5,000/- has been awarded. In total, a sum of Rs.4,93,897/-, which is rounded off to Rs.4,50,000/- has been awarded as compensation to the injured / claimant.

9. The compensation amount so arrived at by the Claims Tribunal is based on the settled principles of law and probabilities of the case. By no means, the compensation awarded by the Tribunal is exorbitant or disproportionate. Also, the Tribunal has rightly not adopted the multiplier method of quantification, but adopted only disablement compensation. The Tribunal has also correctly determined with itemization and awarded the just compensation. If the Insurance Company / appellant is so aggrieved, nothing prevented them from either examining witnesses or producing documents, in their favour, before the Tribunal. But that has not been done. Further, there is no explanation for the long delay on the part of the appellant herein. Hence, this Court finds no reason to interfere with the award so passed by the Claims Tribunal.

10. In the result, the Civil Miscellaneous Appeal, filed by the Insurance Company, is dismissed, confirming the award of the Claims Tribunal. No costs. Consequently, the connected CMPs are closed.

11. The Insurance Company / appellant herein shall deposit the amount awarded with interests and costs, as determined by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said sum to the Savings Bank Account to the claimant / first respondent herein, through RTGS.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal, Sub Court, Tiruppur.

2. The Section Officer, V.R.Section, High Court, Madras

+1cc to Mr.K.Govi Ganesan, Advocate SR.No.46552

+1cc to Mr.M.B.Gopalan, Advocate SR.No.46494

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NMI(CO)
GMY(24/09/2019)