IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1422 of 2004
and C.M.P.No.7580 of 2004

United India Insurance Co. Ltd.,
1170, Muthiah Complex,
Mettur Road, Erode 638 011. .. Appellant/2nd Respondent

Vs.

1. Muthuswamy ..1st Respondent/Claimant

2. R.Arumugam
3. Manoharan ..Respondents 2 & 3/Respondents 1 & 3
(Respondents 2 and 3 are set-exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.12.2003 made in MCOP.No.78 of 2001 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.II, ADJ, Salem.

For Appellant : Mrs.Revathi Muralidharan

JUDGMENT

The appeal is preferred by the appellant Insurance Company against the Judgment and Decree dated 18.12.2003 made in MCOP.No.78 of 2001 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.II, ADJ, Salem, (for brevity, “the Tribunal”).

2. The case in brief, as stated in the claim petition, is as follows:

On the fateful day, ie. on 09.02.2002, at about 5.45hours, the first respondent/claimant was going in his bicycle on the left side of Tiruchengode to Perumalmalai Main Road. At that time, a Tata 407 Tempo bearing Registration No. TAX 6980 insured with the appellant insurance company, came in a rash and negligent manner and dashed against the bicycle. Due to the said impact, the first respondent/claimant sustained multiple injuries all over the body. Stating that the accident had occurred due to the rash and negligent driving of the driver of the tempo, he filed a claim petition claiming compensation of Rs.2,00,000/-.

3.On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,23,100/- with interest at the rate of 9% per annum from the date of petition. Challenging the same, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant/Insurance Company has submitted that the driver of the vehicle did not possess a valid driving licence at the time of accident and hence, the Tribunal ought not to have fastened the liability on the appellant/Insurance company. She also submitted that the compensation awarded by the Tribunal is excessive and exorbitant and the same has to be reduced.

5.Heard the learned Counsel for the appellant and perused the materials available on record carefully and meticulously.

6.It is seen that the respondents are not ready in notice. Even though this appeal was admitted way back in the year 2004, no proper steps have been on the side of the appellant/Insurance Company to serve papers to the other side. However, considering the fact that the appeal is of the year 2004, this Court is inclined to proceed with the appeal on merits.

7.It was the contention of the learned counsel for the appellant Insurance Company that the driver of the vehicle did not possess the valid driving licence at the time of accident and hence, the appellant insurance company cannot be fastened with the liability to pay compensation to the first respondent/claimant. Ex.A1-First Information Report shows that with respect to the accident, a complaint was lodged against the driver of the tempo and the same was also registered against him. The Registration Number of the Tempo has been clearly mentioned in the First Information Report. Further, the driver of the Tempo, who was the competent person, to speak about the manner of the accident, was not examined, which is fatal to the case of the appellant insurance company. Also, the appellant Insurance Company has not adduced any evidence to prove that the driver of the vehicle did not possess a valid licence at the time of accident. Taking note of all those factual scenario, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Tempo. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

8.With regard to the quantum of compensation, P.W.1/ respondent/claimant stated in the claim petition that he was aged about 65 years and was earning Rs.5,000/- by doing milk business. P.W.2/doctor deposed that he examined the respondent/claimant on 21.09.2003 and assessed his permanent disability at 35% and issued Ex.P6 disability certificate. As per Ex.P2-Wound Certificate, the respondent/claimant sustained fracture on right and left leg ankle and left knee and also multiple injury all over the body. The records further disclosed that the claimant was admitted as in-patient and took treatment for ten days in Chellappa Hospital, Salem. Placing reliance on those oral and documentary evidence, the Tribunal has awarded a total compensation of Rs.1,23,100/- i.e., Rs.15,000/- for loss of income during treatment period, Rs.28,100/- for medical bills, as per Ex.P5, Rs.70,000/- towards disability, Rs.10,000/- for future medical expenses, which is fair, just and reasonable and the same cannot be excessive or exorbitant, warranting any interference by this Court.

9.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant/Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this Judgement. On such deposit, the Tribunal shall transfer the amount lying in the deposit to the savings bank account of the first respondent/claimant through RTGS within a period of one week thereafter. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Additional District Judge, Fast Track Court No.II,
Motor Accidents Claims Tribunal, Salem.

Copy to :- The Section Officer, VR Section,
High Court, Madras.

AKM/25.02.2020/3P-3C /

C.M.A.No.1422 of 2004