IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.253 of 2007
and
M.P.No.1 of 2007

M/s.Oriental Insurance Company Limited,
Gopal Gao, Library Building,
Kumbakonam ...Appellant / 2nd respondent

Vs

1. Sathishkumar
2. Angayarkanni
3. Jaisimhan
4. M/s. United India Insurance Co., Ltd.,
   Chennai. ..Respondents/Petitioner and RR 1,3,4

(Respondents 2 to 4 were exparte in the Lower Court)

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 28.02.2006 passed in M.C.O.P.No.95 of 2002 on the file of the Motor Accident Claims Tribunal (II Additional Sub Judge) at Villupuram.

For Appellant : Mrs.R.Sreevidhya

For Respondents 2 to 4 Exparte in Lower Court
R1 Not ready in 1 to 4

J U D G M E N T

This appeal is preferred by the appellant/Insurance Company as against the award passed by the Claims Tribunal dated 28.02.2006 in M.C.O.P.No.95 of 2002.

2.The case in brief is as follows:

On the fateful day, i.e., on 06.12.2000, the first respondent herein was traveling in an ambassador car bearing Registration No.TMU.7326 and at that time, the omni bus bearing Registration No.TN01-F-1001 came in a rash and negligent manner from the opposite direction and dashed against the ambassador car. Due to the said impact, the first respondent sustained multiple injuries in his chest, abdomen and leg. Stating so, he filed a claim petition claiming a compensation of Rs.10,00,000/-. The Tribunal, based on the evidence and documents available on record, has quantified the compensation at Rs.5,00,667/- with interest at 7.5%pa from the date of claim petition. Aggrieved over the same, the Insurer of the Omni bus has preferred this appeal.

3. The learned counsel for the appellant/Insurance Company submitted that the award passed by the Tribunal is contrary to the law, weight of evidence and probabilities of the case. According to her, without considering the evidence of R.W.1, the Tribunal has erred in fixing the entire contributory negligence on the part of the driver of the Omni bus. She further submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant and hence, the same has to be reduced substantially.

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

5. Though this appeal was admitted way back in the year 2007, the appellant insurance company has not taken proper steps to serve notice on the other side even at this length of time. However, due to paucity of time, this Court is inclined to dispose of this appeal, on merits.

6. On a perusal of the award, it is seen that PW1/claimant deposed in his evidence that on 06.12.2000, he was proceeding to Chennai in the Ambassador Car and at about 11.45pm, near Padalam Cross Road, the Omni bus came in a rash and negligent manner and dashed against the Car and caused grievous injuries to him. The testimony of P.W.1 was supported by Exs.P1 FIR, P2 rough sketch and P3 charge sheet, which would disclose that the accident was caused due to the rash and negligent driving of the driver of the Omni bus. Though R.W.1 was examined and Exs.R1 and R2 were marked on the side of the appellant insurance company, the same was not established their stand that the driver of the Car was also responsible for the accident. Hence, the Tribunal has rightly come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Omni bus, which finding this Court is not inclined to interfere.

7. As regards the quantum of compensation, P.W.1/claimant has deposed that he was working as Project Officer in Royal Sundaram Insurance Company and his salary was Rs.20,000/-; due to the accident, he sustained grievous injuries and fracture and due to the same, he could not continue to do his avocation as before. The same was substantiated by the evidence of P.W.2/doctor, who issued Ex.P14 disability certificate at 60%. As per Ex.P4 wound certificate, he sustained two grievous injuries and left side ribs fractures. Further, Ex.P5 discharge summary would reveal that the claimant was 28 years old bachelor. Considering those oral and documentary evidence, the Tribunal, after adopting the multiplier of 18, by taking the age of the first respondent/claimant as 29, has awarded Rs.2,16,000/- towards permanent disability. As per Exs.P10 to P13-medical bills, the Tribunal has awarded Rs.2,74,667/- towards medical expenses and Rs.10,000/- towards conveyance. This Court is of the view that the compensation so awarded is

based on the materials and evidence and having regard to the facts and circumstances of the case and hence, the same need not be interfered.

8. In the result, upholding the award of the Tribunal, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant / Insurance Company shall deposit the entire compensation amount, along with interest and costs, as awarded 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 deposited amount to the Savings Bank Account of the claimant / injured / first respondent herein, through RTGS, within one week thereafter.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

srk / mp

To

1. Motor Accident Claims Tribunal
(II Additional Sub Judge)
Villupuram.

Copy To : The Section Officer
V.R.Section
Madras High Court
Chennai 104.

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.47973

C.M.A.No.253 of 2007

SSV(CO)
GMY(11/06/2020)