IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1877 of 2008
and
M.P.No.1 of 2008

The National Insurance Company Ltd.,
Branch Office, P.B.No.23,
88.F, By-pass Road,
Dharmapuri - 635 701. .. Appellant

Vs.

1. Kannan

2. G.Muthu .. Respondents
(Second respondent 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 04.03.2008 made in M.C.O.P.No.113 of 2007 on the file of the Motor Accident Claims Tribunal, (Sub-Court), Hosur.

For Appellant : Mr.D.Bhaskaran

For R1 : Not Ready in Notice

For R2 : No Appearance

J U D G M E N T

This appeal is preferred by the Insurance Company against the award of a sum of Rs.1,97,400/- towards compensation to the first respondent/claimant due to the injuries sustained by him in a motor vehicle accident.

2. The case in brief is as follows:

On the fateful day, ie., on 17.12.2006, at about 19.00hours, the first respondent/claimant was walking on Thally - Hosur Road. At the time, a Hero Honda Splendor bearing Registration No.TN24 X 0964 belonging to the second respondent and insured with the appellant insurance company came in a rash and negligent manner and hit the first respondent. Due to the said impact, the first respondent/claimant sustained grievous injuries. Stating so, he filed a claim petition claiming a sum of Rs.4,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,97,400/- 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.

3.The learned counsel for the appellant Insurance Company submitted that the rider of the motorcycle did not possess a valid driving licence at the time of accident and thereby, the owner of the vehicle has violated the policy conditions. Hence, the appellant insurance company is not liable to pay compensation. The learned counsel also disputed the quantum of compensation awarded by the Tribunal, contending that the same is excessive and exorbitant.

4.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously. Despite the service of notice and the name of the second respondent having been printed in the cause list, there is no representation on his behalf.

5.It is seen that the first respondent is not ready in notice. Even though a conditional order of Stay was granted way back in the year 2008, the appellant Insurance Company has not taken proper steps to serve papers to the first respondent, even at this length of time. Considering the paucity of time, this appeal is taken up for final disposal on merits.

6.Since the appellant Insurance Company has not disputed the manner in which the accident took place, the finding of the Tribunal that the accident had occurred only due to the rash and negligent act on the part of the rider of the motorcycle, need not be interfered with by this Court.

7.With regard to liability, according to the learned counsel for the appellant insurance company, since the rider of the motorcycle did not possess valid driving licence at the time of accident, the owner of the vehicle has violated the policy conditions and hence, the appellant is not liable to pay compensation. Though the Tribunal, on the basis of the materials and evidence adduced by the parties, has found that the rider of the motorcycle did not possess valid driving licence, taking note of the fact that the policy was in force and placing reliance on the decision of this Court in 2007 (4) TLNJ 679 Civil, rightly fastened the liability on the appellant insurance company to pay compensation, with a right to recover the same from the owner of the vehicle, which finding, this Court is not inclined to interfere.

8.As regards the quantum of compensation, the first respondent/claimant himself examined as P.W.1, who deposed that he was aged 55 years and was earning a sum of Rs.5,000/- per month as Vegetable merchant and Milk vendor. P.W.2/Doctor, who examined the claimant, deposed in his evidence that the first respondent/claimant sustained fracture in the right leg, besides receiving multiple injuries in all over the body; due to the same, he could not do his work as before. After assessing the first respondent/claimant, the doctor issued Ex.P6- Permanent disability certificate to the tune of 40%. Ex.P7 is X-ray, which revealed that the first respondent/claimant sustained multiple injuries. Considering the materials and evidence adduced by the injured, the Tribunal has fixed his monthly income at Rs.4000/-, adopted the multiplier of 8 and taken the permanent disability at 35%; and quantified the compensation under the head "loss of income due to disability" at Rs.1,34,400/- (Rs.48,000/- x 8 x 35/100). The Tribunal has rightly determined the income, adopted the multiplier and assessed the loss of income for the permanent disability suffered by the first respondent/claimant and hence, the same need not be interfered with by this Court.

9.According to the first respondent/claimant, he had incurred Rs.38,000/- towards medical expenses. To prove the same, he produced Ex.P5 medical bills. Taking note of the same, the Tribunal has awarded Rs.38,000/- towards medical expenses, which is the actual medical expenses incurred by the first respondent/claimant for his treatment and hence, the same is hereby confirmed. Further, the Tribunal has awarded Rs.20,000/- towards pain and suffering and Rs.5,000/- towards extra nourishment and transport expenses, which in the opinion of this Court, are just and reasonable and hence, the same warrants no interference.

10.In fine, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant Insurance Company is directed to deposit the entire compensation amount with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit, the Tribunal shall transfer the same to the savings bank account of the first respondent/claimant through RTGS within a period of one week thereafter. It is needless to state that the appellant insurance company can very well recover the compensation paid to the claimant from the owner of the vehicle in accordance with law.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. Motor Accident Claims Tribunal,
   Sub-Court, Hosur.

2. The Section Officer, VR Section,
   High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.57957

C.M.A.No.1877 of 2008

KS(CO)
CS/20/11/2020