

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2044 of 2008
and M.P.No.1 of 2008

Iffco-Tokio General Ins.Co.Ltd.
28, North Usman Road,
T.Nagar, Chennai-600 017.

... Appellant/2nd Respondent

Vs

1.A.Sarangapani ...1st Respondent/Petitioner

2.Thamimul Ansari
(2nd respondent ex-parte before
Lower Court and hence notice may
be dispensed with). ...2nd Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 21.12.2006 made in MCOP No.529 of
2005 on the file of the Motor Accidents Claims Tribunal,
Additional Sub Court, Cuddalore.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Ms.M.Shakkira Banu for R1

JUDGMENT

This appeal is preferred by the Insurance Company against
the award of a sum of Rs.2,83,000/- 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 19.12.2004, at about 19.30
hours, the first respondent was riding his bicycle towards
Cuddalore on the Cuddalore - Chidambaram Main Road. When he
reached near Anaiyampettai Road, the TVS Suzuki motorcycle
bearing Reg.No.PY-01-R-7156, belonging to the second respondent
herein and insured with the appellant Insurance Company, came
from behind in a rash and negligent manner, at high speed, and

dashed against the first respondent's bicycle. Due to the said impact, the first respondent sustained grievous injuries. The first respondent filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,83,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in fastening the entire liability on the appellant Insurance Company. It is also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.The learned counsel for the first respondent / claimant has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference in the hands of this Court.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.On a perusal of Ex.P2-Motor Vehicle Inspector's Report, it is seen that the accident had not occurred due to any mechanical defect of the vehicle. Further, a perusal of the evidence of P.W.1-Claimant and Ex.P1-First Information Report would reveal that only the rider of the motorcycle had driven the same in a rash and negligent manner, thus paving way for the accident. Even though it has been opposed by the Insurance Company contending that the claimant himself had deliberately dashed his bicycle against the two-wheeler, the same has not been substantiated by adducing proper evidence, before the Tribunal. Hence the Tribunal correctly came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the TVS-Suzuki motorcycle, and accordingly fixed the liability on the insurer of the vehicle. In these circumstances, the contention of the learned counsel for the appellant Insurance Company that the Tribunal has erred in fixing the entire liability on the appellant Insurance Company, does not hold any water.

8.Coming to the quantum of compensation awarded by the Tribunal, the Tribunal has awarded a sum of Rs.2,52,000/- towards loss of income. Considering the evidence available on record, the Tribunal came to the conclusion that the injured / claimant would have earned Rs.4,000/- per month as fish vendor

and accordingly calculated the annual income at Rs.48,000/-, adopted the multiplier of 15 and arrived at the sum of Rs.7,20,000/-. Since the injured sustained 35% disability, the Tribunal has taken 35% of Rs.7,20,000/- and accordingly awarded a sum of Rs.2,52,000/- towards loss of income due to disability. The Tribunal has correctly assessed the monthly income of the claimant, adopted the correct multiplier and awarded a sum of Rs.2,52,000/- towards loss of income. The Tribunal has also awarded a sum of Rs.1,000/- towards transportation expenses, Rs.10,000/- towards extra nourishment and Rs.20,000/- towards pain and suffering. The amounts awarded towards these heads are very reasonable and hence the same are confirmed.

9.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar (Admn II)

//True copy//

Sub Assistant Registrar

KM

To

1.The Additional Sub Judge,
The Motor Accidents Claims Tribunal,
Cuddalore.

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

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.66832

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RSI (CO)
GMY (10/02/2020)