IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2220 of 2008

The Oriental Insurance Co.Ltd.,
rep.by its Branch Manager,
Branch Office, No.25-C
Arunagiri Complex, 3rd Floor
Bye-Pass Road, Hosur. .. Appellant / 2nd Respondent

Vs

1.M.Venkataraju .. 1st Respondent / Petitioner

2.L.Rameshkumar .. 2nd Respondent / 1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 28.11.2007 made in MCOP No.85 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Hosur.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.K.Shakespeare for R1

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.2,18,600/- towards compensation to the first respondent, due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On 20.12.2003, at about 8.15 a.m., the first respondent and his friend were pushing the Bajaj M80 motorcycle bearing Reg.No.KA-05-7508 from T.Mallasandiram to go to Thally to rectify the punctured wheel, in the T.Mallasandiram - Thally Road. At that time, a TATA 407 Tempo bearing Reg.No.KA-05-8331 belonging to the second respondent and insured with the appellant Insurance Company, came in the same direction on the back side and dashed against the first respondent and his friend. Due to the said impact, the first respondent sustained grievous and multiple injuries all over the body. 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.2,18,600/- interest at the rate of 9% 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 holding the appellant liable to pay the compensation, since the second respondent herein has violated the policy conditions by permitting to drive the vehicle without valid driving licence. He also questioned the quantum of compensation awarded by the Tribunal, stating that the same is excessive and exorbitant.

5.The learned counsel for the first respondent has submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation and hence the same 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.It has been put forth on the side of the Insurance Company before the Tribunal that the First Information Report has been filed with a delay of four days from the date of accident and that the tempo van bearing Reg.No.KA-05-8331 has been falsely implicated in the case. Ex.P1 is the First Information Report, which has been filed against the driver of the tempo. R.W.1-Sub-Inspector of Police, deposed before the Tribunal that he did not register the case in Crime No.267 of 2003 relating to the accident. The owner of the vehicle also deposed before the Tribunal that he had not seen the accident directly and he came to know about the occurrence, only from the driver. No steps have been taken on the side of the Insurance Company to appoint any officer for investigating the matter and to file a report. In these circumstances, 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, which factual finding this Court is not inclined to interfere.

8.With regard to the quantum of compensation awarded by the Tribunal, the Tribunal has awarded a sum of Rs.1,83,600/- towards loss of income. Since the injured was doing the business of selling flowers and vegetables, the Tribunal fixed the monthly income of the injured / claimant at Rs.3,000/-, arrived at the annual income at Rs.36,000/-, applied the multiplier of 17 and arrived at the sum of Rs.1,83,600/- in respect of 30%

disability. The Tribunal has also awarded a sum of Rs.10,000/- towards pain and suffering, Rs.20,000/- towards medical expenses, relying upon Ex.P7-Medical Bills and Rs.5,000/- towards transportation expenses and extra nourishment. The amounts awarded by the Tribunal under the above heads are very reasonable and hence the same are confirmed. But it is seen that the Tribunal has fixed the interest rate at 9% p.a. from the date of petition. Since only the interest rate of 7.5% was prevailing at the relevant point of time, the interest rate fixed by the Tribunal stands modified to 7.5% p.a., from the date of petition.

9.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The appellant Insurance Company is directed to deposit the compensation of Rs.2,18,600/- with interest at the rate of 7.5% per annum from the date of petition, 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(CS III)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Motor Accidents Claims Tribunal
   Principal Subordinate Judge at Hosur

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.K.Shakespeare, Advocate, S.R.No.60941

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SSD(CO)
SSM(26/09/2019).