IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1334 of 2009
and
M.P.No.1 of 2009

The Manager,
United India Insurance Company Ltd.,
Motor T.P.Cell, 38, Anna Salai,
Chennai - 2. .. Appellant/2nd Respondent

Vs.

1. M.S.Gopal ..Respondent/Petitioner
2. Bakthavachalam .. Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.04.2005 made in O.P.No.626 of 2004 on the file of the Motor Accident Claims Tribunal (Sub - Court), Thiruvallur.

For Appellant : Mr.D.Bhaskaran

JUDGMENT

Challenging the quantum of compensation awarded by the Tribunal, the appellant Insurance Company has preferred this Civil Miscellaneous Appeal.

2.The case in brief, is as follows:

On the fateful day, i.e., on 09.06.2004, at about 15.45hours, one Raghu and the first respondent/claimant were rider and pillion rider in the TVS - 50 bearing Registration No.TN 20 H 4593 belonging to the second respondent and insured with the appellant insurance company. At that time, a dog was suddenly crossed the road, due to which, the rider of the TVS-50 applied sudden brakes and lost control over the vehicle. As a result of the same, both the occupants of the vehicle fell down and sustained grievous injuries. Claiming a compensation of Rs.2,00,000/-, the first respondent/claimant filed a claim petition. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,80,000/- with interest at the rate of 9% per annum from the date of petition. Aggrieved over the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company contended that the quantum of compensation awarded by the Tribunal is excessive, exorbitant and disproportionate to the injuries sustained by the first respondent and hence, the same has to be reduced substantially.

4.Even though this appeal was admitted way back in the year 2009, no proper steps have been taken on the side of the appellant Insurance Company to serve papers to the other side. However, having regard to the efflux of time, this Court is inclined to decide this appeal on merits.

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

6.There is no grievance with regard to the findings of the Tribunal on negligence and liability fastened on the appellant insurance company and hence, the same are confirmed.

7.As regards the quantum of compensation, the first respondent/claimant himself examined as P.W.1, who deposed that he was aged 32 years and was earning a sum of Rs.6,000/- per month. However, no proof was produced to substantiate the same. P.W.2/Doctor, who examined the claimant, deposed in his evidence that the first respondent/claimant sustained left temporal and parietal hemorrhagic contusion, fracture in right clavicle and he issued Ex.P7-disability certificate to the tune of 60%. The Tribunal, after taking note of the age, avocation, income and the injuries sustained by the first respondent/claimant, has taken the monthly income of the first respondent/claimant at Rs.5,000/- and permanent disability at 60% and awarded Rs.60,000/- by fixing Rs.1000/- per percentage of disability; Rs.75,000/- towards loss of earning capacity due to disability, Rs.5,000/- towards towards loss of income during treatment period. Based on the materials and evidence adduced by the first respondent/claimant, the Tribunal has rightly awarded the compensation under the said heads and hence, the same need not be interfered with by this Court.

8.That apart, the Tribunal has awarded Rs.15,000/- towards medical expenses, Rs.20,000/- towards pain and suffering, Rs.2,000/- towards extra nourishment, Rs.3000/- towards transportation, which this Court is not inclined to interfere, as the same is just and appropriate and also based on the conventional methodologies and the provisions of the Motor Vehicles Act.

9. At this juncture, the learned counsel for the appellant Insurance Company submitted that the appellant cannot be saddled with the interest at the rate of 9% per annum from the date of petition till the date of deposit.

10. This Court finds some force in the said contention. Considering the fact that the accident took place on 09.06.2004; the claim petition was disposed of by the Tribunal on 28.04.2005; the appellant has filed this appeal during the year 2009; and it is being disposed of only now i.e., in the year 2019, there is no fault in reducing the rate of interest awarded by the Tribunal from 9% to 7.5%pa from the date of claim petition till the date of deposit. Accordingly, the award of the Tribunal is modified to that extent.

11. In fine, this appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant Insurance Company is directed to deposit the entire award amount along with interest at 7.5%pa from the date of petition till the date of deposit 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 judgment. On such deposit being made, the first respondent/claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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To

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

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

+1cc to Mr.D.Bhaskaran, Advocate SR.No.65317

C.M.A.No.1334 of 2009

LN(CO)
GMY(22/07/2020)