

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1462 of 2009

and

M.P.No.1 of 2009

United Insurance Company Ltd.,
Sankari

... Appellant/2nd respondent

Vs.

1. G.Kannan

...1st Respondent/Petitioner

2. M.Mohan

...2nd Respondent/2nd Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the award and decree dated 30.07.2004 made in MCOP. No.39 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal Sub Judge, Salem.

For Appellant : Mr.M.L.Ganesan
For R1 : Notice served - No appearance
For R2 : Notice not ready

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 30.07.2004 made in MCOP. No.39 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal Sub Judge, Salem for reduction of compensation.

2. It is the case of the appellant that on 31.07.2002, at about 9.00 P.M., the first respondent/claimant was traveling in a TVS 50 XL bearing Registration No.TN 30 B 5792 as a pillion driver with his friend Jayavel, who was driven the moped, on Salem - Sankari Main Road from west to east direction. When the first respondent was nearing Chinna Seeragapadi Samathuvapuram, the lorry bearing Registration No.TN 29 Y 2498 was came from the same direction which was driven by its driver, in a rash and negligent manner, hit against the TVS 50 XL, occurred the accident. Due to which, the first respondent and his friend Jayavel were thrown away from the two wheeler and they sustained grievous injuries and fractures. Immediately, they have taken to the Shanmuga Hospital, Salem as in-patient. The accident had happened only due to the rash and negligent driving of the

driver of the lorry. Hence, the first respondent herein, has filed a Claim Petition before the Motor Accident Claims Tribunal, Salem, against the owner and insurer of the lorry, claiming Rs.10,00,000/- as compensation under various heads.

3. Denying the allegations of the claimant, the appellant insurance company filed a counter affidavit before the Tribunal, submitting that there is no negligence on the part of the driver of the lorry. The entire accident took place only due to rash and negligence of the claimant who suddenly attempted to overtake the lorry. Further, the Tribunal has awarded a sum of Rs.4,69,275/- is highly excessive. Therefore, the appellant Insurance Company is not liable to pay any compensation to the claimant. Hence, sought for dismissal of the petition with costs.

4. During the trial before the Tribunal, on the side of the claimant, the first respondent examined as many as four witnesses viz., P.W.1 to P.W.4 and marked 15 documents viz., Exs.P1 to P15. On the side of the respondents, no one was examined and no document was marked.

5. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.4,69,275/- as compensation to the claimant. Aggrieved by the award dated 30.07.2004, the appellant insurance company has filed this appeal before this Court.

6. On perusal of the award dated 30.07.2004 passed by the Motor Accident Claims Tribunal Salem, it is seen that the accident has not been disputed, and only the cause of accident, i.e. Whether the accident had occurred due to the rash and negligent driving of the driver of the lorry or due to the negligence of the claimant, was disputed. Though it was proved before the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the lorry. Therefore, the Tribunal has come to the conclusion that the owner of the lorry and the insurance company are liable to compensate the claimant for the injuries of the claimant.

7. On careful perusal of the judgment of the Tribunal, it is seen that the first respondent is claimant, aged about 23 years, earning a sum of Rs.6,000/- per month, was traveling in a two wheeler as a pillion rider and his left side hip was fractured, he lost six of his teeth and sustained injuries all over his body due to the accident. He was taken to the private hospital and admitted as in-patient and underwent surgery and he spent a sum of Rs.2,00,000/- for treatment. P.W.2 Doctor has assessed the percentage of the disability as 60%. Because of which, he could not able to do his work. The Tribunal has adopted the correct multiplier method and correctly assessed the loss of

income due to permanent disability. Hence, the same does not require any interference by this Court. The amounts awarded towards other heads are also very reasonable and hence the same are also confirmed.

8. In view of the above, this Court do not find any error in the award dated 30.07.2004 passed by the Tribunal in M.C.O.P.No.39 of 2003. There is no merit in the appeal and therefore, this Court is not inclined to interfere with the same.

9. In the result, the Civil Miscellaneous Appeal is dismissed and a sum of Rs.4,69,275/- awarded by the Tribunal as compensation to the first respondent/claimant is hereby confirmed. The appellant insurance company and the second respondent/owner of the lorry are directed to deposit the entire amount awarded by the Tribunal jointly or severally along with interest and costs, less the amount already deposited if any, within a period of eight 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 compensation as awarded by the Tribunal along with interest and costs, less the amount, if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Principal Subordinate Judge,
Salem.

Copy to:
The Section Officer,
V.R.Section, High Court, Madras.

+1 c to Mr.S.Arunkumar, Advocate, sr.100825.

Pvs (co)
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