

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.08.2019

Coram

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Civil Miscellaneous Appeal No.1828 of 2009
and
M.P.No.1 of 2009

ICICI Lombard General Insurance
Company Limited,
No.1, Cenataph Road,
Teynampet, Chennai 18.

Appellant /2nd Respondent

Vs

1.R.Satish Kumar ...1st Respondent/Petitioner

2.V.Satish ...2nd Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Judgment and Decree dated 28.03.2008 passed by the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai in MCOP No.2321 of 2005.

For Appellant : Mrs.R.Sreevidhya

For Respondents : Mr.P.Chinnaraj for R1
R2 - Exparte

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred by the appellant / Insurance Company against the award of Rs.1,00,916/- passed by the Motor Accident Claims Tribunal in M.C.O.P.No.2321 of 2005 dated 28.03.2008.

2.The case in brief, is as follows:

On 06.12.2004, at about 02.00 pm, when the 1st respondent / claimant was proceeding in the motorcycle bearing Reg.No.TN 02 S 5798 in the Nelson Manickkam Road, Chennai, from west to east direction, in front of the Mosque, another motorcycle bearing Reg.No.TN 22 AB 7008 belonging to the second respondent and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the claimant's motorcycle, due to which, the claimant sustained grievous injuries all over the body. Stating that the accident had happened only due to the rash and negligent riding of the rider of the motorcycle bearing Reg.No.TN 22 AB 7008, the claimant filed a claim petition before the Tribunal claiming a compensation of Rs.2,00,000/-. Considering the materials and evidence available on record, the

Tribunal has awarded a total compensation of Rs.1,00,916/- with interest at the rate of 12% 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/ Insurance Company has submitted that the award of the Tribunal is erroneous, contrary to law, weight of evidence and probabilities of the case. She further submitted that the Tribunal has erred in holding that the rider of motorcycle bearing Reg.No. TN 22 AB 7008 was responsible for the accident. It is further submitted that the Tribunal has grossly erred in fastening liability on the Insurer, in a case where the accident had occurred on 06.12.2004 whereas admittedly the insurance policy was in force from 07.12.2004 only and not earlier. Further, the learned counsel submitted that the compensation awarded by the Tribunal under the various heads are excessive and exorbitant.

5.The learned counsel for the first respondent / claimant has submitted that the negligence aspect as well as the quantum arrived at by the Tribunal are based on the evidence on record and documents placed before and hence, there is no need to interfere with the award of the Tribunal.

6.Heard both sides and perused the records.

7. On a perusal of records, it is seen that the Tribunal has fastened the liability on the part of the rider of the second respondent's motorcycle, which was insured with the appellant herein. To arrive at such a conclusion, the Tribunal placed reliance on Ex.P-6-FIR, Ex.P-7 sketch coupled with the evidence of P.W.1. It is also seen that no contra evidence has been adduced in this regard on the side of the Insurance Company before the Tribunal. Hence, the Tribunal, in the absence of any contra evidence and documents, has fastened the negligence on the rider of the motorcycle belonging to the second respondent herein and accordingly fastened the liability on the appellant Insurance Company, being the insurer for the said vehicle. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

8.Regarding the quantum of compensation, the Tribunal has awarded a sum of Rs.18,000/- towards loss of earnings for a period of four months, Rs.2,000/- each towards transport expenses and extra nourishment, Rs.3,000/- towards damage to clothes / articles, Rs.5,916/- towards medical expenses, Rs.25,000/- towards 25% permanent disability at the rate of Rs.1,000/- per percentage of disability, Rs.24,000/- towards pain and suffering, Rs.10,000/- each towards loss of amenities and loss of expectation of life and Rs.1,000/- towards other expenses. The Tribunal has relied upon the exhibits, evidence of witnesses, medical bills, treatment records, percentage of disability assessed by the Doctor and all other aspects in a proper perspective and has awarded the above amounts under various heads to the claimants. Further, this Court is of the

considered view that the amounts awarded towards these heads are reasonable and justifiable and hence the same are confirmed.

9. In the result, affirming the award of the Tribunal, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

10. The appellant / Insurance Company shall deposit the compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four 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-III-MDU)

//True copy//

Sub Assistant Registrar

srk / vkr

To

1. The Judge,
The Motor Accident Claims Tribunal/
III Court of Small Causes,
Chennai.

Copy To : The Section Officer, V.R. Section
Madras High Court,
Chennai 104

PM(CO)
GMY(07/08/2020)

CMA No.1828 of 2009

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