

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.08.2019
CORAM:
THE HON'BLE Mr. JUSTICE R.MAHADEVAN
Civil Miscellaneous Appeal No.4114 of 2008

United India Insurance Co. Ltd.,
Divisional Office,
Nanjappa Road, Coimbatore. ... Appellant/R2

..vs..

1. K.S. Madhu ...R1/Petitioner
2. C.C. Mathayee
(set exparte before MACT) ...R2/R1
3. M/s. New India Assurance Co.
Main Office, Coimbatore.R3/R3
4. P. Subramanian
C-140, Phase I
Kurichi Housing Unit
SIDCO, Coimbatore
(set expart before MACT)R4/R4

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 30.10.2006 made in M.C.O.P.No.531 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court-II, Coimbatore.

For Appellant :Mrs. I. Malar
For Respondent-1 :No Appearance
For Respondents 2 and 4 : Ex-parte
For Respondent 3 : S.Manohar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the judgment and decree dated 30.10.2006 passed by the Claims Tribunal, in MCOP.No.531 of 2002.

2.In an accident that took place on 09.11.1997 at about 06.30 am at Madhukkarai (North South) Main Road, near Pothi Store Privu, Kuruchi Housing Unit, involving the two wheelers, viz.Bajaj Scooter bearing Registration No.TN-37-M-3418 and TVS Moped bearing Reg.No.TN-37-L-3160, the injured K.S. Madhu (first respondent herein) has sustained grievous injuries. The case of

the claimant before the Tribunal was that the TVS moped, belonging to the 4th respondent herein and insured with the appellant herein came in a rash and negligent manner and hit the two wheeler ridden by the claimant. Hence, the claimant has filed a petition for compensation for a sum of Rs.2,00,000/-. As against the said claim, the Tribunal has awarded a sum of Rs.71,900/- with interest at the rate of 7.5% per annum from the date of petition, as total compensation. Challenging the same, the Insurance Company has filed the present Appeal.

3.The learned counsel for the appellant has submitted that the Tribunal has erred in awarding compensation to the claimant in the absence of any documentary evidence to show that the accident had occurred due to the rash and negligent driving of the driver of the scooter. It is also submitted that since the claimant has paid the premium only for his vehicle in respect of public risk and vehicle damages, the Insurance Company is not liable to pay any compensation to the claimant. It is further submitted that only the rider of TVS-50 two-wheeler caused the accident, due to the rash and negligent riding.

4.The learned counsel for the third respondent Insurance Company has submitted that the Tribunal has correctly fixed the negligence on the part of the rider of the Bajaj Scooter and the compensation awarded by the Tribunal is just, fair and reasonable.

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

6.With reference to negligence aspect, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the rider of the Bajaj two-wheeler, ie., the claimant. It is seen that in the case filed by the owner of the TVS-50 two-wheeler in MCOP No.849 of 1998, in respect of this accident, the Tribunal therein, considering the facts and circumstances of the case, directed the appellant Insurance Company to pay compensation. Taking note of the same, the Tribunal held that the appellant Insurance Company, being the insured for the Bajaj two-wheeler has to pay the compensation to the first respondent / claimant. This Court is not inclined to interfere with the same.

7.With regard to quantum, this Court is of the opinion that the compensation awarded under all the heads by the Tribunal are reasonable, weight of evidence and based on settled principles and therefore, there is no ground to interfere with the same.

8.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The appellant / Insurance Company is directed to deposit the compensation amount, along with interests and costs, as ordered by the Claims Tribunal, less the amount already deposited, if any, 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 is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

srk/smn

To

1. The Additional District and Sessions Judge,
The Motor Accident Claims Tribunal,
Fast Track Court-II, Coimbatore.
2. The Section Officer, V.R.Section,
Madras High Court,
Chennai 104

+1 cc to Mr.T.Ravichandran Advocate sr67512

+1 cc to Mr.S.Manohar Advocate sr67026

C.M.A.No.4114 of 2008

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