

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.779 of 2008

and

M.P.No.1 of 2008

United India Insurance Co.Ltd
5th Branch Office
R.S.Puram
Coimbatore

..... Appellant / 2nd Respondent

Vs

1. N.Suresh @ Thiruvankadam 1st Respondent/Petitioner

2. M/s.Senthil Explosiver
No.121, Sarojini Street
Ram Nagar
Coimbatore

.... 2nd Respondent / 1st Respondent

Prayer: Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 21.08.2006 made in MCOP No.400 of 2000 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Tiruppur.

For Appellant : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the appellant / Insurance Company against the award passed in MCOP No.400 of 2000.

2.The case in brief is as follows:-

On 28.11.1999, at about 12.45 hours, the first respondent/claimant, working in M/s.Arun Krishna Apparels, Tiruppur as a Cutting Master and earning a monthly salary of Rs.4,000/-, met with an accident. While he was riding his moped bearing Regn.No.TN39 K 3209 on Tiruppur to Kangeyam Road, a lorry bearing Regn.No.TN37 E 5197, came from the opposite direction in a rash and negligent manner and dashed against the moped. Due to the said impact, the claimant sustained grievous injuries. Hence, he filed a claim petition claiming

compensation of Rs.5,00,000/-. On consideration of the evidence and materials available on record, the Tribunal has awarded a total compensation of Rs.1,11,000/- with interest at 7.5%pa 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 submitted that the Tribunal has erred in coming to the conclusion that the driver of the lorry alone was responsible for the accident. According to him, at the time of accident, the rider of the moped carried two persons as pillion riders, due to which, he could not balance the vehicle properly and caused the accident. The learned counsel further submitted that the Tribunal has erred in granting huge sum of Rs.1,11,000/- as compensation, without any basis and hence, the same has to be reduced substantially.

5.Heard the learned counsel for the appellant/Insurance Company and perused the materials available on record.

6.Though a conditional order of interim stay was granted way back in the year 2009, the appellant has not taken proper steps to serve papers on the respondents even at this length of time. However, considering the passage of time, this Court is inclined to proceed with the appeal on merits.

7.P.W.1/claimant has deposed in his evidence that due to rash and negligent driving on the part of the driver of the lorry, the accident had happened, in which, he sustained grievous injuries. The said evidence was corroborated by Ex.P.1 First Information Report, which was registered against the driver of the lorry for causing the accident. Though the appellant insurance company resisted the claim made against them on the ground that at the time of accident, the rider of the moped carried two persons as pillion riders, in violation of the traffic rules and policy condition, they have not proved the same by adducing any evidence either in oral or documentary. In the absence of any concrete material to deny the manner of accident as putforth by the claimant, the Tribunal has rightly come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the lorry and accordingly fastened the liability on the appellant insurance company to pay compensation. This Court finds no good reason to differ from the view taken by the Tribunal and hence, the same is hereby confirmed.

8.Regarding the quantum of compensation, the Tribunal, taking into consideration Exs.P2 and P3-Discharge Summaries dated 24.12.1999 and 14.01.2000, Exs.P.4 and P6 Series - Medical

bills, Ex.P.5-wound certificate and Ex.P.8 Disability Certificate, has quantified the total compensation at Rs.1,11,000/- viz., Rs.24,000/- towards partial disability, Rs.24,000/- towards loss of income, Rs.1,500/- towards transport expenses, Rs.4,000/- Extra nourishment, Rs.500/- towards damage to clothes, Rs.17,000/- towards medical expenses, Rs.20,000/- towards pain and suffering and Rs.20,000/- towards loss of earning power, which, in the opinion of this Court, is nothing but just and reasonable and the same cannot be treated as excessive and exorbitant at any stretch of imagination and hence, the same is hereby confirmed.

9. In fine, the Civil Miscellaneous Appeal is dismissed. No costs. The appellant/ Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount lying in the deposit to the Savings Bank Account of the claimant / 1st respondent herein, through RTGS, within one week thereafter. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal/Subordinate Judge,
Tiruppur.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai 104.

+1cc to Mr.S.Arunkumar, Advocate Sr.60324

C.M.A No.779 of 2008

mp[co]
srg 06/02/2020