IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2716 of 2010

ICICI Lombard General Insurance Company Limited,
Bandra-Kuria Complex,
Bandre (East), Mumbai - 400 051. ... Appellant/ 2nd Respondent

Vs

1.N.Pandiyan ... 1st Respondent/Petitioner
2.T.Ramachandran ...2nd Respondent/1st Respondent

Prayer: Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.03.2009 made in MCOP No.111 of 2007 on the file of the Motor Accidents Claims Tribunal, the Additional District Court, Fast Track Court No.4, Coimbatore at Tiruppur.

For Appellant : M/s.R.Sreevidhya

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Insurance Company/appellant herein as against the judgment and decree dated 31.03.2009 made in MCOP No.111 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.4, Coimbatore at Tiruppur.

2.According to the first respondent / claimant, on 18.12.2006, when he has travelling in the TVS-Champ moped, bearing Registration No.TN-39-H-3174 in the Tirupur-Palladam Road, the mini auto bearing Registration No.TN-24-8718 came from the opposite direction in a rash and negligent manner and hit the moped. Due to the impact, the first respondent / claimant was thrown out from the vehicle and sustained grievous injuries. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as total compensation. As against the compensation claimed by the claimant, the Tribunal has awarded a total compensation of Rs.3,27,753/- with interest at the rate of 7.5% per annum from the date of petition. The Tribunal has also given liberty to the Insurance Company to pay the compensation and thereafter recover the same from the owner of the vehicle, on the ground of violation of policy conditions.

3.Challenging the same, the present appeal has been preferred by the appellant Insurance Company.

4.Despite ordering notice to the respondents for couple of occasions, they were not served till date. However, considering the paucity of time, this appeal is taken up for final disposal, on merits.

5.The learned counsel for the appellant has submitted that the Tribunal has erred in fastening the liability on the appellant Insurance Company, when the fact remained that the driver of the mini auto was not possessing the valid driving licence at the relevant point of time. It is also submitted that the compensation awarded by the Tribunal is excessive.

6.Heard the learned counsel for the appellant and perused the materials and evidence available on record, carefully and meticulously.

7.The claimant has been examined as P.W.1 before the Tribunal. He deposed that the accident had occurred only due to the rash and negligent driving of the driver of the mini auto. This finding has not been opposed on the side of the Insurance Company by adducing evidence. Taking note of the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the mini auto, which factual finding deserves no interference by this Court.

8.Further, accepting the contention of the Insurance Company that the driver of the mini auto was not having the requisite badge and endorsement for driving heavy vehicles, as he was possessing only the licence for light motor vehicles, the Tribunal granted liberty to the appellant Insurance Company to pay the compensation to the claimant and thereafter recover the same from the owner of the vehicle, on the ground of violation of policy conditions. Since the findings rendered in this regard by the Tribunal are on proper analysation of the materials and evidence, this Court is not inclined to interfere with the same.

9.With regard to the quantum of compensation, the Tribunal has awarded a sum of Rs.2,80,500/- towards loss of future income on account of disability, Rs.5,000/- towards pain and suffering, Rs.5,000/- towards extra nourishment, Rs.2,000/- towards transport expenses, Rs.200/- towards loss of clothes and Rs.35,053/- towards medical expenses, as per Ex.P4-Hospital Bill Series. The Tribunal has relied upon the exhibits, evidence of witnesses, medical bills, treatment records, percentage of disability assessed by the Doctor, took note of the II Schedule of the Motor Vehicles Act 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.

10.In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

11.The appellant / Insurance Company is directed to 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 and thereafter, recover the same from the owner of the vehicle, in the manner known to law. On such deposit being made, the first respondent / claimant is permitted to withdraw the same on making proper application before the Tribunal.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

dua/srk

To
1.The Additional District Judge
The Motor Accidents Claims Tribunal
Fast Track Court No.4,
Coimbatore at Tiruppur.

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

C.M.A.No.2716 of 2010

SSV(CO)
SP(24/07/2020)