IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.838 of 2009
and
M.P.No.1 of 2009

The United India Insurance Company Ltd.,
Third Party Motor Claims Cell,
No.38, Anna Salai,
Chennai-600 002. ... Appellant/3rd Respondent

..vs..

1. Karthikeyan
2. M.Venkatesan
3. P.Muralikrishna ... Respondents/Petitioner, Respondents 1 & 2

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 07.10.2008 made in O.P.No.454 of 2006 on the file of the Motor Accident Claims Tribunal (Fast Track Court No-4), Ponneri.

For Appellant : Mr. D.Bhaskaran

For R1 & R3 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the appellant/insurance company against the award passed by the Claims Tribunal in M.C.O.P.No.454 of 2006 dated 07.10.2008.

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2. Brief facts, which are necessary for the disposal of the Appeal, are as follows :

On 11.02.2004 at about 6.00 p.m, when the first respondent herein was returning from work in an auto-rickshaw bearing Regn.No.TN-22-Y-9326 from Puduvayal to Arani, due to the rash and negligent driving of the auto-rickshaw by its driver, it got capsized. Due to the said impact, the first respondent sustained multiple grievous injuries. The second respondent herein is the driver and the third respondent herein is the owner of the auto-rickshaw. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as compensation. The Tribunal, based on the materials and evidence, has awarded a sum of Rs.1,23,000/-

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with interest at the rate of 7.5% per annum from the date of petition as total compensation.

3.Challenging the same, the appellant Insurance Company has come up with this appeal.

4.The learned counsel for the appellant/insurance company has submitted that when Ex.P3-Insurance Policy did not cover the risk of death of or bodily injury to gratuitous passengers and even according to the claimant, the vehicle in which he travelled, is a goods vehicle, the Insurance Company is not liable to pay compensation. It is also submitted that the compensation awarded by the Tribunal is excessive.

5.Heard the learned counsel for the appellant and perused the materials available on record. Despite service of notice and the name of the respondents 1 and 3 having been printed in the cause list, there is no representation on behalf of them.

6.The Tribunal has taken note of the evidence of P.W.1-Claimant and Ex.P1-First Information Report coupled with other documentary evidences, and come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the auto-rickshaw and the appellant/insurance company is liable to pay the compensation. To render such a finding, the Tribunal has taken shelter from Ex.P3- Insurance Policy and Ex.P.5 Motor Vehicle Inspector's Report. It is not in dispute that the owner of the vehicle remained exparte before the Tribunal, but the Insurance policy submitted before the Tribunal would disclose the fact that the policy was in force at the time of accident and the appellant/insurance company is liable to indemnify the owner of the vehicle. In these circumstances, the Tribunal has fixed the liability on the appellant Insurance Company, to pay compensation to the claimant. The Tribunal has correctly considered the materials and evidence and came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the auto-rickshaw and the appellant Insurance Company is liable to pay the compensation to the claimant.

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7.With regard to the quantum of compensation, the Tribunal has awarded a sum of Rs.1,400/- towards transportation expenses, Rs.4,500/- towards Extra Nourishment, Rs.1,00,000/- towards Permanent Disability and loss of earning capacity, Rs.15,000/- towards pain and suffering and Rs.2,100/- towards loss of earning. These amounts were awarded taking note of the fact that the injured suffered 60% disability on account of sustaining fractures and grievous injuries with great loss of amenities. This Court is of the view that the amounts awarded towards these heads are very reasonable and hence the same are confirmed.

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8.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected MP is closed.

9.The appellant / Insurance Company is directed to deposit the entire 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-VII)

//True Copy//

Sub Assistant Registrar

srk / vv

To

1.Motor Accident Claims Tribunal
(Fast Track Court No-4), Ponneri.

2.The Section Officer,
V.R.Section, Madras High Court,
Chennai 104

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 64022

C.M.A.No.838 of 2009
& MP No.1 of 2009

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