WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A. No.611 of 2010
and
MP.Nos.1 & 2 of 2010

United India Insurance Co. Ltd.,
Oriental Complex,
Salem -1 … Appellant/3rd Respondent

Versus

1. P. Ravi
2.Jacob Williams
(R2 Exparte before Tribunal, Hence may be dispensed with)
3.New India Assurance Co. Ltd.,
45, Moore Street,
Chennai - 600 001. … Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Common Judgment and Decree dated 30.10.2008 passed in M.C.O.P.No. 324 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankagiri.

For Appellant : Mr.N.Vijayaraghavan
For Respondent : Mr.N. Manoharam (for R1)
: Ex-parte - R2
: Mr.C.Sangamithirai (for R3)

J U D G M E N T

The present appeal has been filed by the Insurance company against the Common Order and Decree dated 30.10.2008 made in M.C.O.P.No.324 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankagiri, fixing liability on their part.

2.It is the case of the first respondent herein/claimant in MCOP.No.324 of 2006 that, on 22.05.2006, when he was travelling in his TATA Sumo bearing Regn.No.TN-27-E-4833 along with his daughters and friends from Elampillai to Chennai to attend a family function near the railway gate at P.Kutchipalayam, which

https://hcservices.ecourts.gov.in/hcservices/

was closed, his vehicle was parked on the left side in front of other vehicles, the Omni Bus bearing Regn.No.TN-30-Z-4005 driven in a rash and negligent manner rammed into the TATA Sumo vehicle belonging to the claimant. As a result of the said accident, the claimant, his daughters and the other occupants of the car, including the driver of the TATA Sumo sustained simple and grievous injuries. Further, the TATA Sumo vehicle was also completely damaged. Immediately, the claimant was taken to Villupuram Government Hospital, wherein first aid was given and, thereafter, he was admitted in the MIOT Hospital, Chennai, where he underwent first surgery and further surgery was performed at K.G.Hospital, Coimbatore for head injury.

3.Therefore, the first respondent herein/claimant filed the above said claim petition, claiming a sum of Rs.1,50,000/- towards pain and suffering and a further sum of Rs.5,00,000/- towards damages to the said vehicle. In all, he claimed a sum of Rs.6,50,000/- as compensation.

4.The Insurance Company resisted the claim petition by filing counter affidavit, contending that the driver of the TATA Sumo bearing Reg.No.TN-27-E-4833 belonging to the claimant, did not park the vehicle in a proper manner and he did not notice the Omni bus behind his vehicle, and applied a sudden brake, and due to the rash and negligent driving of the driver of the TATA Sumo, the claimant and others sustained simple and grievous injuries. Hence, the Insurance Company is not liable to pay compensation to the claimant and the Insurance Company also denied the age, avocation and income of the claimant and prayed for dismissal of the claim petition.

5.Since in the said accident, other persons were also sustained injuries and had filed separate claim petitions, a joint trial was held before the Tribunal, where P.Ws.1 to 6 were examined on the side of the claimant(s) and Exs.P-1 to P-106 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex.R-1 was marked. After going through the oral and documentary evidence adduced, the Tribunal fixed the responsibility on the part of the driver of the Omni Bus, which was insured by the 3rd respondent and a common award was passed directing the 3rd respondent to pay the compensation to the victims.

6.In respect of the claim petition in MCOP No.324 of 2006, pertaining to the claimant/1st respondent herein, compensation was claimed not only for the injuries sustained and the surgeries underwent, but also towards damage to the vehicle, which was estimated at Rs.5,00,000/-.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7.The learned counsel appearing for the appellant/Insurance company contended that the estimate/cost, as claimed above is very excessive. The Tribunal did not consider that the vehicle was 10 years old and it was 1996 model, hence, as per the evidence of the Surveyor/RW.1, it is necessary to reduce the depreciation apart from salvage. In spite of the report issued by RW.1, the Tribunal has fixed the value, which is on the higher side. Thus, the learned counsel for the appellant/Insurance Company sought for setting aside the findings rendered by the Tribunal and prays to allow this appeal.

8.I have heard the learned counsel appearing for the respective parties and perused the materials available on record.

9.The materials available on record relating to fixing the negligence on the part of the driver of the Omni Bus not being disputed, this Court confirms the said finding.

10.Insofar as the compensation payable to the claimant/1st respondent herein is concerned, a perusal of the records reveal that the claimant had undergone two surgeries, which are evidenced through the medical bills as well as the medical records. Further, Ex.P17/Photo copy of the damage of the claimant vehicle, Ex.P19/ copy of Estimate bill of the claimant's vehicle issued by the Surveyor of the Insurance company and Ex.P22/Policy copy of the claimant's vehicle, coupled with Ex.P24/Motor Inspector's Report, taking cue from the decision of this Court in Venkatachalapatahy Vs. United India Insurance Company Limited, reported in 2005 (2) LW 335, the Tribunal has assessed the compensation towards damage to the vehicle at Rs.2,02,004/- out of which the Tribunal has ordered payment of Rs.1,25,000/- by the 1st respondent, the insurer of the claimant's vehicle, as required amount has been paid under the policy towards coverage. The finding and the compensation awarded by the Tribunal is based on sound and cogent reasoning and does not call for any interference. The balance of amount, from that amount of Rs.2,02,004/- to the tune of Rs.77,004/- was directed to be paid by the 3rd respondent, the insurer of the offending vehicle. The reasoning for ordering the said amount is also convincing and calls for no interference.

11.Insofar as the compensation awarded to the claimant on account of loss of income, pain and suffering, extra-nourishment, transport charges and medical expenses are also based on materials available on record and by no stretch of imagination, could the amounts awarded under those heads could not be termed to be excessive or disproportionate. Therefore, the compensation awarded to the claimant under the above heads

https://hcservices.ecourts.gov.in/hcservices/

amounting to a sum of Rs.74,788/- also is just and reasonable and it does not require any interference at the hands of this Court.

WEB COPY

12.In all, the Tribunal awarded a sum of Rs.1,51,792/- (Rs.74,788 + Rs.77,004) to be paid by the insurer of the offending vehicle and a sum of Rs.1,25,000/- to be paid by the appellant, the insurer of the claimant's vehicle does not call for any interference. Accordingly, the amounts awarded by the Tribunal under various heads to be paid by the concerned insurer, are detailed as hereunder :-

13.Compensation awarded to the claimant under various heads on account of the injuries suffered by him payable by respondents 2 and 3 herein :-

Heads	Amount awarded by the Tribunal
Loss of Income	Rs.12,000/-
Disability	Rs.20,000/-
Pain and suffering	Rs.5,000/-
Extra-nourishment	Rs.5,000/-
Transportation charges	Rs.3,000/-
Medical expenses	Rs.29,788/-
Total	Rs.74,788/-

14.Compensation awarded to the claimant towards damage to the vehicle of the claimant to be paid by the respective insurers as detailed below :-

Damages to the vehicle of the claimant to be paid by 3rd respondent	Rs.77,004/-
Damages to the vehicle alone to be paid by the insurer of the claimant's vehicle, viz., the appellant herein	Rs.1,25,000/-

15.In the result, the Civil Miscellaneous Appeal filed by the appellant/Insurance company is dismissed confirming the award dated 30.10.2008 passed in M.C.O.P.No. 324 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankagiri to the extent indicated above. The respective insurance companies are directed to deposit the amount as determined by the Tribunal and confirmed by this Court above,

https://hcservices.ecourts.gov.in/hcservices/

together with interest 7.5%, less the amount, if any, already deposited, within a period of eight weeks from the date of copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount to the bank account of the claimant/first respondent through RTGS within a period of two weeks thereafter. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Sub Court, Sankagiri.

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

+1cc to Mr.M.B.Gopalan, Advocate Sr.25897
+1cc to Mr.N.Manokaran, Advocate Sr.26497
+1cc to M/s.C.Sangamithirai, Advocate Sr.25602

C.M.A. No.611 of 2010
and
MP.Nos.1 & 2 of 2010

nmi[co]
srg 24/09/2019

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/