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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :12.03.2019

Pronounced on :18.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2111 of 2011 and M.P.No.1 of 2011
and

C.M.A.No.2112 of 2011 and M.P.No.1 of 2011

The United India Insurance Co.Ltd.,
P.P.S. Complex, 1st Floor,
Mettur Main Road,
Omalur - 636 455
Salem District.

.. Appellant in both C.M.As

Vs.

1.P.Mani .. 1st Respondent in C.M.A.No.2111 of 2011
1.R.Mani .. 1st Respondent in C.M.A.No.2112 of 2011

2. P.Perumal .. 2nd Respondent in both C.M.As
(R-2 set exparte before the Tribunal)

Prayer in C.M.A.No.2111 of 2012:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.11.2010 made in M.C.O.P.No.828 of 2007 on the file of the learned Motor Accident Claims Tribunal (Additional District Judge) at Krishnagiri.

Prayer in C.M.A.No.2112 of 2012:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.11.2010 made in M.C.O.P.No.883 of 2007 on the file of the learned Motor Accident Claims Tribunal (Additional District Judge) at Krishnagiri.

For Appellant : Mr.J.Chandran
in both C.M.As

For R1 : No appearance

For R2 : Set exparte before the Tribunal
in both C.M.As



COMMON JUDGMENT

The second respondent / Insurance Company before the Tribunal, is the appellant herein.

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2. The first respondent in C.M.A.No.2111 of 2011 has filed M.C.O.P.No.828 of 2007, while the other person injured in the very same accident has filed M.C.O.P.No.883 of 2007.

3.The claimants have preferred M.C.O.P.NO.828 of 2007 and M.C.O.P.No.883 of 2007 alleging that: (i) On 21.07.006 at about 20.30 hours, they were proceeding from Thoppur check-post to Thoppur Town by a motor cycle bearing Registration No.TN 29C 2670. One of the petitioner R.Mani was riding the motor cycle in slow and cautious manner. At that time, at about 20:30 hours, rider of another motor cycle bearing registration No.TN 27 T 3081 came in a rash and negligent manner and dashed against the claimants.

ii) Due to the impact, the petitioner in M.C.O.P.No.828 of 2007 P.Mani sustained injuries on his left knee joint and left elbow, low back and injuries all over the body. Immediately after the accident, petitioner was given first aid treatment at local clinic, Thoppur and after that, he was admitted in the Sree Gokulam Hospital, Salem. At the time of accident, P.Mani was aged about 40 years and earned Rs.10,000/- per month through agriculture and cattle business. After the accident, he was immobilized.

iii) Due to the impact, the petitioner in M.C.O.P.No.883 of 2007 R.Mani sustained injuries on his left frontal compound depressed fracture and fracture right clavicle and injuries all over the body. Immediately after the accident, petitioner was given first aid treatment at local clinic, Thoppur and after that, he was admitted in the Sree Gokulam Hospital, Salem and took treatment from 21.07.006 to 06.08.006. At the time of accident, petitioner R.Mani, was aged about 53 years and earned Rs.10,000/- per month through agriculture and poultry farm and flower business.

4. The Insurance Company has filed counter statement alleging that the rider of insured vehicle TVS Excel TN-27-T-3081 had no valid and effective driving licence at the time of the accident and the plea of contributory negligence has also been taken.

5. During the Trial, the claim petitioners were examined as P.W.1 and P.W.2 and Exhibits P1 to P12 were marked and on behalf of the respondent-Insurance Company, R.W.1 to R.W.3 were examined and Exhibit R1 copy of the Insurance Policy was marked.



6. Based upon the evidence of the injured persons P.W.1 and P.W.2, coupled with the evidence of R.W.1 rider of the two wheeler T.V.S vehicle, the offending vehicle, that he has pleaded guilty and paid the fine as per Ex.P5 judgment copy of the Criminal Court, the Tribunal has held that the accident has taken place due to the rash and negligent driving of the TVS vehicle and accordingly, held that both the owner of the vehicle as well as the Insurance Company are liable to pay compensation and hence, the present appeals have been filed.

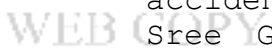
7. The learned counsel for the appellant/Insurance Company would submit that as the rider of the two wheeler does not possess valid and effective driving licence at the time of the accident, the appellant/Insurance Company is not liable to pay the amount jointly and severally with the owner and he also contended that the multiplier method adopted for the grievous injury is not warranted and hence, he prayed for allowing the appeals.

8. Though summons have been served on the claimants, none appeared for them. This Court perused the records of the trial Court.

9. In view of the specific finding by the Tribunal, based upon the evidence of the injured witnesses P.W.1 and P.W.2, coupled with the evidence of the driver of the TVS vehicle, the offending vehicle who was examined as R.W.1, the Tribunal has rightly come to the conclusion that the accident has taken place due to the rash and negligent driving of the rider of the TVS vehicle, the insured vehicle and as such the said finding is hereby confirmed.

10. Admittedly, R.W.1 was charged sheeted by the police and he has pleaded guilty and the copy of the judgment in S.T.C.300 of 2007 was marked as Exhibit P5 which also shows that the rider of the TVS vehicle does not possess valid driving licence and so also R.W.1's evidence and hence, this Court is of the considered view that the appellant/Insurance Company is directed to pay the award amount and thereafter, recover the same in the E.P proceedings from the owner of the vehicle.

11. To the limited extent of pay and recovery, the award of the Tribunal is hereby modified. On the point of quantum, after perusing the evidence of P.W.3 Doctor, who had issued disability certificate in Exhibit P11 for P.W.1 namely P.Mani who is the claimant and based upon Exhibit P3 discharge summary of P.W.1 P.Mani, the Tribunal has noted down that he has taken treatment in Sree Gokulam Hospital on 21.07.2006 and discharged on 22.07.2006 and taking into account Exhibit P6



12. P.W.2 is R.Mani who suffered injury in the said accident and Exhibit P7 is the wound certificate issued by the Sree Gokulam Hospital; Exhibit P8 is the discharge summary; Ex.P10 series are the medical bills, while Ex.P11 is the disability certificate issued by P.W.3. It is seen from Exhibit P8 discharge summary that P.W.2 was admitted in Sree Gokulam Hospital on 21.07.006 and discharged on 06.08.2006 and thus he was in-patient for 15 days. P.W.3 who clinically examined P.W.2, has given Ex.P11 disability certificate fixing the disability at 70%.

14. Taking into consideration the partial permanent disability fixed at 60%, the compensation is arrived at the rate of Rs.2,000/- per 1% of disability. Accordingly, 60*2000/-=Rs.1,20,000/- is awarded under the head "partial permanent disability" and for the medical bills produced before the Tribunal, Rs.72,000/- was awarded, and the same is hereby confirmed and also Rs.7,000/- for extra nourishment and Rs.7,000/- for transportation and also Rs.20,000/- for pain and sufferings are hereby confirmed and for attender charges, it is seen that there is no award for the same by the Tribunal. However, after going through Exhibit P3 and Exhibit P8 Discharge summary, in the interest of justice, Rs.7,000/- is hereby awarded for "attender charges". Accordingly, the compensation awarded by the Tribunal is hereby re-assessed and fixed as Rs.2,33,000/- instead of Rs.2,64,000/- granted by the Tribunal.

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Heads	Trial Court	High Court
Loss of income	Rs. 1,58,400/-	----
Partial permanent disability	----	Rs. 1,20,000/-
Loss of pain and sufferings	Rs. 20,000/-	Rs. 20,000/-
Attender Charges	----	Rs. 7,000/-
Medical Expenses	Rs. 72,000/-	Rs. 72,000/-
Extra Nourishment	Rs. 7,000/-	Rs. 7,000/-
Transportation	Rs. 7,000/-	Rs. 7,000/-
Total	Rs. 2,64,400/-	Rs. 2,33,000/-

16. As far as the quantum of compensation awarded by the Tribunal in M.C.O.P.No.828 of 2007 is concerned, this Court finds that no infirmity in the award passed by the Tribunal and the same is confirmed.

17. In the result,

i) C.M.A.No.2111 of 2012 in M.C.O.P.No.828 of 2007 is dismissed and C.M.A.No.2112 of 2012 in M.C.O.P.No.883 of 2007 is partly-allowed with liberty to the Insurance Company to pay and recover the compensation. The quantum of compensation has been reduced as stated supra with pay and recovery. No costs. Consequently, connected Miscellaneous Petitions are closed.

ii) The learned counsel for the Insurance Company stated that the entire award amount has already been deposited and the Insurance Company permitted to withdraw the balance amount.

iii) The claimants are permitted to withdraw the compensation amount with accrued interest.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Additional District Judge) at Krishnagiri.

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

+1 cc to Mr.J.Chandran, Advocate, S.R.No.25321

C.M.A.No.2111 of 2011 and M.P.No.1 of 2011 and
C.M.A.No.2112 of 2011 and M.P.No.1 of 2011

SS (CO)
SSM(07/11/2019) .