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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.186 of 2015
and M.P.No.1 of 2015

M/Oriental Insurance Co. Ltd.,
No.115/16, Second Floor,
Oriental House,
Prakasam Salai,
Broadway,
Chennai - 600 108.

.. Appellant / 2nd Respondent

Vs.

1.Tmt.Jainubee

.. 1st Respondent / Petitioner

2.Thiru.S.Karthikeyan

.. 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.04.2014 made in M.C.O.P.No.1153 of 2013, on the file of the Motor Accident Claims Tribunal, V Judge, Small Causes Court, Chennai.

For Appellant : Mr.J.Chandran

For R1 : Mr.F.Terrychella Raja
for Ms.M.Malar

For R2 : Not ready in Notice.

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company, challenging the award dated 22.04.2014 made in M.C.O.P.No.1153 of 2013, on the file of the Motor Accident Claims Tribunal, V Court, Small Causes Court, Chennai.



2.The appellant-Insurance Company is 2nd respondent in M.C.O.P.No.1153 of 2013, on the file of the Motor Accident Claims Tribunal, V Court, Small Causes Court, Chennai. The 1st respondent filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by her in the accident that took place on 06.07.2011. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.4,74,000/- as compensation to the 1st respondent. Against the said award dated 22.04.2014 made in M.C.O.P.No.1153 of 2013, granting compensation to the 1st respondent, the appellant-Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant contended that the Tribunal ought to have held that the accident has occurred due to rash and negligent act of the 1st respondent and reduced compensation under Section 140 of Motor Vehicles Act. The 1st respondent was aged 70 years. The Tribunal erred in fixing the monthly income at Rs.4,500/- per month and granted a sum of Rs.18,000/- towards loss of income for four months. The compensation awarded by the Tribunal towards loss of amenities and pain & suffering are excessive. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

4.Per contra, learned counsel appearing for the 1st respondent contended that the 1st respondent examined herself as P.W.1 and proved that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 2nd respondent. The appellant or 2nd respondent did not let in any contra evidence to disprove the evidence of P.W.1. FIR was registered only against the rider of the motorcycle belonging to the 2nd respondent. The 1st respondent was working as a house-maid and was earning a sum of Rs.6,000/- per month. The 1st respondent has taken treatment in the hospital as in-patient for 35 days and has taken continuous treatment as out-patient from 07.02.2012 to 26.09.2012. The Tribunal has considered the evidence of P.W.1 & P.W.2 and awarded compensation which is not excessive and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as learned counsel appearing for the 1st respondent and perused the materials available on record.



6.From the materials available on record, it is seen that the 1st respondent has contended that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 2nd respondent. The 1st respondent examined herself as P.W.1 and deposed the manner of the accident. The FIR was registered against the rider of the motorcycle belonging to the 2nd respondent. The appellant or the 2nd respondent did not let in any evidence to disprove the evidence of P.W.1. The Tribunal considering the evidence of P.W.1 and FIR held that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 2nd respondent. There is no error in the reasoning of the Tribunal warranting interference by this Court.

7.As far as quantum of compensation is concerned, the 1st respondent examined herself as P.W.1 and Doctor as P.W.2 to prove the nature of injuries, treatment taken and disability suffered by her. From the materials available on record, it is seen that the 1st respondent has taken treatment in the hospital as in-patient for 35 days, underwent two surgeries and has taken treatment as out-patient from 07.02.2012 to 26.09.2012. Considering the age, nature of injuries, period of treatment taken by the 1st respondent, the amounts awarded by the Tribunal towards pain & suffering and loss of amenities are not excessive. The Tribunal considering entire materials on record, awarded total compensation under different heads, which are not excessive warranting interference by this Court.

8.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.4,74,000/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount together with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mtl



To

1.The V Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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

+1 cc to M/s.J.Chandran, Advocate, S.R.No.29273

+1 cc to M/s.M.Malar, Advocate, S.R.No.28511

C.M.A.No.186 of 2015

NRL (CO)
SSM(24/09/2019)