IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.2436 of 2011
and
MP.No.1 of 2011

ICICI Lombard General Insurance Company Ltd.,
Rep.by its Branch Manager, Branch Office,
Swarnamigai Plaza, SF.No.6/5,
Block No.7, Ward -C, Omalur Main Road,
Salem - 636 009. … Appellant

Versus

1.A.Manoharan

2.K.Venkatesan … Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 03.11.2010 made in MCOP No.268 of 2008 on the file of the Motor Accident Claims Tribunal (Additional Subordiante Judge) at Krishnagiri.

For Appellant : Mr.R.Sreevidhaya

For Respondents : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 03.11.2010 made in MCOP No.268 of 2008 on the file of the Motor Accident Claims Tribunal (Additional Subordiante Judge) at Krishnagiri.

2.The crisp of the case is that on 04.03.2008, when the claimant/first respondent herein was driving his T.V.S 50 X.L moped bearing registration No.TN-29-X-3986, a TATA ACE mini door Van bearing Registration No.TN-24-C-6762 was driven by its driver in a rash and negligent manner and dashed against the claimant/first respondent herein. As the claimant sustained grievous injuries in the accident, he filed the claim petition seeking compensation of Rs.10 lakhs. The second respondent herein is the owner of the Van which was insured with the appellant.

3.The appellant/Insurance company resisted the claim petition by contending that the driver of the Van was not holding a valid driving licence and no badge was obtained by him for driving a commercial vehicle, thus, there is a policy violation and therefore, the insurance company cannot be mulcted with any liability to pay compensation to the claimant. The Insurance company denied their liability on further ground that it was the claimant, who contributed to the accident as he was driving the vehicle in an inebriated condition and therefore, the entire liability cannot be fastened on them.

4.The Tribunal, taking into account Ex's.A2 and A3, wound certificates and the deposition of Doctors PW.2 & PW.3, had taken the permanent disability of the claimant as 45%. Further, on the basis of deposition of the Doctors that the injuries sustained by the claimant would affect his avocation, the Tribunal has adopted the multiplier method. By taking the notional income of the claimant at Rs.4,500/- and adopting multiplier 14, arrived at Rs.3,40,200/- towards permanent disability. That apart, the Tribunal awarded compensation under other conventional heads and arrived at a total sum of Rs.4,87,700/- as compensation. The break-up details of the compensation amount awarded by the Tribunal are as follows:-

Heads	Amount awarded by the Tribunal
Loss of future earning power	Rs.3,40,000/-
Pain and Sufferings	Rs.30,000/-
Transport to Hospital	Rs.1,554/-
Extra Nourishment	Rs.10,000/-
Medical Expenses	Rs.70,928.40/-
Future Medical expenses	Rs.25,000/-
Expenses for stay of relatives	Rs.10,000/-
Total	Rs.4,87,682.40/- (as round off Rs.4,87,700/-)

Aggrieved by the same, the appellant/Insurance company has filed this present appeal.

5.The learned counsel for the appellant/claimant would raise the contentions that the Tribunal failed to note that the claimant contributed negligence to the accident inasmuch as he was driving the vehicle in an inebriated condition. Further, it was contended that there was a policy violation as the driver of the Van did not possess a licence to drive a commercial vehicle and therefore, the insurance company cannot be fastened with any liability to pay compensation. Further, the Tribunal has fixed the income of the claimant, without any basis and it is onerous. Therefore, the learned counsel for the appellant prayed for allowing this appeal.

6.Heard the learned counsel appearing for the appellant and perused the materials available on record.

7.The argument of the learned counsel for the appellant is that the driver of the Van did not possess a valid driving at the time of accident no longer survives for consideration, in the light of the decision of the Honourable Supreme Court in [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,] reported in AIR 2017 SC 3668, the Supreme Court cases, wherein it has been held that a person who has a valid licence to dirve a light motor vehicle can drive a vehicle of same category and obtaining endorsement or badge is not necessary. In veiw of the Judgment of the Hon'ble Supreme Court referred to above, the appellant/Insurance Company cannot be exonerated from its liability on the ground that the driver of the insured vehicle did not obtain endorsement or badge.

8.On going through the evidence adduced by the appellant before the Tribunal, it is seen that the injured was examined by two Doctors viz., PW.2 & PW.3, who issued Ex's.P.2 & P.3, wound certificates respectively. The medical evidence given by the above said Doctors for permanent disability was accepted by the Tribunal and passed appropriate orders. Furthermore, the Tribunal, taking note of the loss of income and considering the monthly earning capacity of the victim as Rs.4,500/-, has arrived at Rs.54,000 towards annual income and by fixing the permanent disability suffered by the claimant at 45% and by applying multiplier 14 on the basis of the age of the claimant, who was aged 42 years at the time of accident, and has awarded a sum of Rs.3,40,200/- under the head of permanent disability. Further, the Tribunal has awarded compensation under other conventional heads and arrived at a total compensation of of Rs.4,87,700/-. In my considered opinion, the compensation awarded by the Tribunal at Rs.4,87,700/- is just and reasonable. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

9.Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the amount as determined in this appeal together with interest, after adjusting amount, if any, already deposited within a period of eight weeks from the date of copy of this Judgment. On such deposit, the respondents/claimants are permitted to withdraw the same with accrued interest, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Vehicles Accident Claims Tribunal
   (Additional Subordiante Judge), Krishnagiri.

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

+1 CC to M/s.R.Sreevidya, Advocate sr 10281.

CMA No.2436 of 2011
and
MP.No.1 of 2011

VSNII(CO)
SP(27/04/2019)