

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated :01.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
CMA No.2665 of 2011
and
MP.No.1 of 2011

M/s.ICICI Lombard General
Insurance Company Limited,
Branch office, Swarnambigai Plaza
1st Floor, No.33, Omalur Main Road,
Near bus stand, Salem Town&Taluk

... Appellant/2nd Respondent

Versus

1.Mallan
2.M.Madhiyan

... Respondents/ Petitioner /1st respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 25.04.2011 made in M.C.O.P.No.211 of 2009 on the file of the Motor Accident Claims Tribunal (Additional District Judge) at Dharmapuri.

For Appellant : M/s.R.Sreevidhya

For Respondents : Mr.V.Kumaravelan (for R1)

: Exparte before the Tribunal (for R2)

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 25.04.2011 made in M.C.O.P.No.211 of 2009 on the file of the Motor Accident Claims Tribunal (Additional District Judge) at Dharmapuri.

2.The brief facts of the case are that on 12.11.2008 at about 10.00 p.m, the claimant along with 3 others were travelling in TATA ACE Mini Van, bearing Registration No.TN 29 AY 5743, which was loaded with 'Marigold' flower baskets, from Kathiripuram to Thanjavoor. When the said van was nearing Somampatti bridge, the driver of the van tried to overtake a lorry at a high speed, in a rash and negligent manner, due to which he lost the control of the van and suddenly turned the van, as a result of which the claimant fell down from the van and sustained injuries on his knee and fracture of hip and thigh. The claimant was immediately taken to Dr.Elangovan Hospital, Bommidi, got

treated and then taken to Government Head Quarters Hospital, Dharmapuri, where he was treated. Thereafter, he was taken to 'kurunji' Hospital at Salem, wherein he took treatment as an in-patient. Prior to the accident, the claimant was hale and healthy and doing agricultural operations and also doing flower business. He was aged about 38 years at the time of accident and earning a sum of Rs.7,000/- per month and contributed a sum of Rs.6,500/- towards family maintenance. The claimant is unable to stand, squat and walk as usual, due to injury over knee and thigh and he is also unable to sit and lie down in normal position, due to fracture of hip. Therefore, he is unable to do his avocation as before the accident. Thus, the claimant filed a claim petition for a sum of Rs.8,00,500/- as compensation for the injuries sustained in the said accident, which was restricted as Rs.3,00,000/-.

3.Before the Tribunal, on the side of the claimant, he examined himself as PW.1 besides examining one Dr.Krishnakumar as PW.2 and thirteen documents were marked as Ex.P1 to P13. On the side of the respondents, one M.Selvakumar examined as RW.1 and two documents were marked as Ex.R1 & R2.

4.After analysing the oral and documentary evidence, the Tribunal held that the Insurance Company and the owner of the van are jointly or severally liable to pay the compensation. By coming to such a conclusion, the Tribunal made the calculation under different heads and awarded a total sum of Rs.98,000/- as compensation to the claimant. Aggrieved over the same, the appellant/Insurance company has come up with the present appeal.

5.The learned counsel for the appellant/Insurance Company would contend that the claimant had travelled in the Van only as a gratuitous passenger and there is contributory negligence on his part. Further, the compensation awarded by the Tribunal under the different heads are on the higher side. Thus, he prayed for proper modification of the compensation amount.

6.Per contra, the learned counsel appearing for the claimant submitted that the other persons, who also sustained injuries in the very same accident, had filed claim petitions against the very same insurance company and the Tribunal has passed an award, against which the Insurance Company had filed an appeal before this Court and the said appeal was dismissed by this Court holding that the insurance company has jointly and severally liable to pay the compensation. Thus, the learned counsel for the claimant sought for dismissal of this appeal.

7. Heard both sides and perused the materials available on record.

8. From the perusal of the materials available on record, particularly Ex.P1, P6 & P8, it is seen that the accident has taken place only due to rash and negligent driving of the driver of the TATA ACE Mini Van TN-29-AY-5743 owned by the first respondent and as per the terms and conditions of the policy-Ex.P9, the insurance company and the owner of the vehicle are liable to pay the compensation amount, jointly and severally, as held by the Tribunal.

9. With regard to the quantum of compensation amount awarded by the Tribunal, it is seen that on the basis of Wound Certificate-Ex.P.12, the Tribunal has fixed the disability suffered by the claimant at 30% and awarded a sum of Rs.60,000/- under the head of disability. For the injuries sustained by the claimant, the Tribunal has awarded Rs.30,000/-, a sum of Rs.5,000/- for pain and sufferings, a sum of Rs.1,000/- each under the heads of Transportation, Extra-nourishment and loss of amenities. Thus, the Tribunal has awarded a total sum of Rs.98,000/- as compensation, which cannot be said to be on the higher side. Hence, this Court does not find any infirmity in the award passed by the Tribunal and there is no merit in the appeal.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is hereby confirmed. The Insurance Company and the owner of the vehicle are directed to deposit the entire compensation amount, as directed by the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the same by making necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Accident Claims Tribunal
(Additional District Court) Dharamapuri.

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

+lcc to M/s.R.Sreevidhya , Advocate SR.No. 20145

CMA.No.2665 of 2011
and

MP.No.1 of 2011

A.SK(17/07/2019)



WEB COPY