

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2255 of 2015

United India Insurance Co. Ltd.,
144-B, Kalpana Road,
Udumalpet.

.. Appellant/3rd respondent
vs.

1. S.Rajan ..1st respondent/Claimant
2. Kulandaivelu
3. Paulraj ... 2nd & 3rd Respondents /1st and 2nd respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.02.2015 made in M.C.O.P.No.225 of 2012 on the file of the Motor Accidents Claims Tribunal (Sub-Court) at Udumalpet.

For Appellant : Mrs.I.Malar

For R-1 : Mr.L.Mouli

For R2 & R3 : No appearance

J U D G M E N T

The appeal is preferred by the appellant Insurance Company against the Judgment and Decree dated 27.02.2015 made in MCOP.No.225 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Udumalpet, (for brevity, "the Tribunal").

2.The case in brief, is as follows:

On the fateful day, i.e., on 13.06.2012, at about 7.45 p.m., the first respondent/claimant was riding the two wheeler bearing registration No.TN 48 Z 2589 in Udumalpet-Palani Road from West to East direction. When he reached Palampatti Samathuvapuram, a Maruti 800 car bearing registration No.TN 42 X 8118 belonging to the third respondent and insured with the appellant insurance company, came in a rash and negligent manner from the opposite direction and dashed against the two-wheeler, which was riding by the first respondent. Due to the said impact, the first respondent/claimant sustained grievous injuries. Stating that the accident had occurred only due to the carelessness and

negligence on the part of the driver of the Car, he filed a claim petition claiming a sum of Rs.10,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.5,11,235/- with interest at the rate of 7.5% per annum from the date of petition. Aggrieved over the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company has submitted that the rider of the two wheeler was also responsible for the accident and hence, the Tribunal ought to have fixed contributory negligence on him as well. He also submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant and hence, the same has to be reduced to some extent.

4.Per contra, the learned counsel for the first respondent/claimant submitted that the Tribunal after evaluating the oral and documentary evidence, has awarded a just compensation, which warrants no interference in the hands of this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record. Despite the service of notice, there is no representation on behalf of the respondents 2 and 3.

6.The Tribunal has considered the evidence of P.W.1/claimant and P.W.2 as well as Ex.P1 First Information Report and Ex.P2-Charge sheet and Ex.P6-copy of the judgment and has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the car driver. In the absence of any evidence on the side of the appellant insurance company to prove that the claimant was also responsible for the accident, this Court finds no reason to differ with the finding so rendered by the Tribunal. Hence, the same is confirmed as such. Consequently, the appellant is liable to pay compensation to the respondent/claimant.

7.As regards the quantum of compensation, the claimant has deposed in his evidence that he was 34 years and was earning a sum of Rs.5,000/- per month as a Supervisor in Tosmac shop. PW3- Doctor has deposed that the claimant sustained grievous injuries and 56% permanent disability. Ex.P3 is wound certificate, Ex.P9 is salary certificate and Ex.P10 is the medical bill. Considering the materials and evidence adduced by the first respondent/claimant, the Tribunal has awarded Rs.2,16,000/- towards loss of income, taking the monthly income at Rs.4,500/- and adopting the multiplier of 16 and taking the

permanent disability at 25% (1/4). The Tribunal has correctly analyzed the income of the petitioner, adopted the correct multiplier and arrived at the said sum towards the loss of income and hence, the same does not call for any interference by this Court.

8. That apart, the Tribunal has awarded Rs.1,68,235/- towards medical expenses, Rs.25,000/- towards transportation, extra nourishment and attender charges, Rs.27,000/- towards loss of income during treatment period, Rs.25,000/- towards pain and suffering and Rs.50,000/- towards future medical expenses, which in the opinion of this Court, seem to be fair, just and reasonable, considering the nature of the injuries suffered and the period of treatment taken by the claimant and hence, the same need not be interfered.

9. Thus, affirming the award passed by the Tribunal, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant Insurance Company is directed to deposit the entire award amount along with interest and costs, as ordered by the Tribunal, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount lying in the deposit to savings bank account of the first respondent/claimant through RTGS within a period of one week thereafter.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
Sub-Court, Udumalpet.

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

+1cc to M/s.L.Mouli , Advocate SR.No. 91852

+1cc to M/s.I.Malar, Advocate SR.No.920

C.M.A.No.2255 of 2015

A.SK(23/09/2020)