IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.09.2018

Delivered on : 25.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.226 of 2015
and
M.P.No.1 of 2015

M/s.United India Insurance Co. Ltd.
Rep. by Manager,
Branch Office,
Bypass Road,
Dharmapuri District. … Appellant/Respondent No.2

Vs.

1.Venkatesan … Respondent/Appellant

2.Senthilkumar Auto Agency,
Rep. by its Manager,
… Respondents/Respondent No.1 in MCOP

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.1000 of 2009 dated 30.06.2014 on the file of the learned Motor Accident Claims Tribunal (Sub-ordinate Judge) at Dharmapuri District.

For Appellant :Mr.J.Chandran

For Respondents :Mr.M.Selvam (for R1)
No Appearance (for R2)

JUDGMENT

The present Civil Miscellaneous Appeal arises out of the award of the MACT (Sub-Court), Dharmapuri in MCOP.No.1000 of 2009.

2.The claimant has alleged that on 01.08.2008 while he was washing his car near Subha Hospital the Yamaha Motor cycle bearing Registration No.TN-29-AC-5548 driver by its driver in a rash and negligent manner dash against the claimant and the claimant suffered multiple injuries in the said accident. The claimant was immediately taken to the SKS Hospital, Salem where he was treated as inpatient from 02.08.2009 to 06.08.2009. He underwent a surgery for internal fixation of fibula, plating of tibia by minimally invasive technique and he was still undergoing treatment. The accident occurred only due to the rash and negligent act of the driver of the motor cycle and hence the insurance company is liable to pay compensation to the petitioner.

3.The Insurance company has contested the case denied the liability and contended interalia that the accident did not occur due to the negligence of the driver and the claim is excessive. The 1st respondent had remained exparte.

4.The trial court based on the pleading framed issues whether the accident happened due to the negligence of the driver and whether the driver had a valid driving licence and the what compensation the petitioner is entitled to.

5.I heard Mr.J.Chandran, learned counsel for the appellant and Mr.M.Selvam, learned counsel for the 1st respondent and perused the entire materials available on record. No representation on behalf of the 2nd respondent.

6.The claimant sustained grievous injury due to the Road Traffic Accident dated 01.08.2009. He underwent a surgery and was treated as an inpatient from 02.08.2009 to 06.08.2009. He has admittedly suffered an accident and a FIR was registered in Crime No.1574 of 2009 with the Dharmapuri Town Police Station. The Insurer/Appellant has alleged that the accident did not take place and they have marked Exhibit R1 final report of the police in the above said Cr.No.1574 of 2009. The Sub-Inspector of Police was examined as RW1. He has deposed that the case has been closed and he has also stated that he did not enquire the owner of the vehicle or the driver. Further no report on what further action was taken by police on the filing the closure report. The Judgment of the criminal courts are not binding on the MACT nor relevant in the claim for compensation. This position has been explained in many Judgment of this court. So this court need not look into the finding of the police. The police might have closed the case since no one pressed for prosecution. The factum of accident is established by the FIR, further investigation has not been done by the police. The Sub-Inspector of Police, who deposed as RW1 has admitted that he did not enquire the driver or the owner of the vehicle. Therefore, the criminal case has been dropped and that cannot be held against the claimant. The claimant has proved the factum of accident. Regarding the closure, the insurer ought to have let in evidence that the insured vehicle was not involved in the accident. The burden of proof is on the appellant, the appellant having failed to discharge his burden the tribunal rightly fixed the liability on the respondents.

7.Regarding the driver having a valid driving licence, it is the settled position of law that the burden of proof is on the insurer to prove that there is a policy condition violation. The Insurer has not let in any evidence in this regard. The claimant has marked Ex.P3 xerox copy of licence the driver of the vehicle and Ex.P4 Insurance policy. The R1 has not appeared and denied the accident and no attempt has been made by Insurer to examine the driver of the owner of the vehicle to disprove the accident or the violation of policy condition. Therefore the appellant has miserably failed to discharge his liability and thus the tribunal has rightly fixed the liability on the Insurer.

8.The claimant has deposed as PW1 and deposed he is driver, he has sustained grievous injury in the accident and suffered displaced closed fracture of fibula (right) and closed commuted displaced fracture of tibia (right). He was admitted to hospital where he underwent a surgery and spent 6 days as inpatient. The claimant examined the doctor as PW2 who gave disability certificate of 55% disability. The claimant was a driver and he was earning Rs.8,000/- p.m. but no documents have been filed in this regard. The Tribunal took Rs.4,000/- as his income which given the fact that he was a driver is reasonable. The claimant was 34 years old at the time of accident, the tribunal adopting 16 multiplier has arrived to the sum of Rs.3,84,000/- for loss of income due to permanent disability. The same is reasonable. Considering the fact that the claimant was immobile for 2 months due to the injury the tribunal has ordered a sum of Rs.8,000/-. The claimant has produced Ex.P7 Medical Bill for a sum of Rs.55,000/- and Ex.P8 transportation Bill Rs.20,000/- and awarded as under:

Permanent Disability	Rs.3,84,000/-
Pain and suffering	Rs. 15,000/-
Loss of Income	Rs. 8,000/-
Medical expenses	Rs. 55,000/-
Transportation charges	Rs. 20,000/-
Extra nourishment	Rs. 10,000/-
Total	Rs. 4,92,000/-

9.The amount of compensation of Rs.4,92,000/- awarded by the Tribunal is reasonable and there is no need to interfere with the same. The appellant is directed to deposit the amount with interest at the rate of 7.5% p.a. from the date of petition till the date of payment.

10.With the above direction, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

vs

To

The Motor Accidents Claims Tribunal
(Sub-ordinate Judge) Dharmapuri.

+1cc to Mr.M.Selvam, Advocate SR.No.17501

+1cc to Mr.J.Chandran, Advocate SR.No.17199

C.M.A.No.226 of 2015
and
M.P.No.1 of 2015

RSV(CO)
GMY(11/03/2019)