



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2447 of 2015
and M.P.No.1 of 2015

The Branch Manager,
United India Insurance Co. Ltd.,
11/A, M.C. Road,
Ambur Taluk, Vellore District. ... Appellant/2nd Respondent

Vs.

1.Chakaravarthi ..1st Respondent/Petitioner
2.S.John ..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 30.07.2013 made in M.C.O.P.No.1123 of 2013, on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Krishnagiri.

For Appellant : Mr.T.Ravichandran

For R1 : Mr.K.Prasanna
for M/s.Mukund R.Pandian

For R2 : Mr.K.Varadhakamaraj

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company, challenging the award dated 30.07.2013 made in M.C.O.P.No.1123 of 2013, on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Krishnagiri.

2.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.1123 of 2013, on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Krishnagiri. The 1st respondent filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.07.2010.



3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.6,66,300/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent. Challenging the said award dated 30.07.2013 made in M.C.O.P.No.1123 of 2013 granting compensation to the 1st respondent, the appellant-Insurance Company has come out with the present appeal.

4.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal ought to have fixed contributory negligence on the part of the 1st respondent. The Doctor has fixed 75% disability without following the medical guidelines. The Tribunal erred in accepting the disability certificate and awarding compensation excessively. The 1st respondent did not prove the loss of income due to the injuries. The Tribunal in the absence of evidence, awarded excessive amounts as compensation. The 1st respondent got reimbursement of the medical expenses from the Star Health Insurance as per the Government Servant Rules and he is not entitled for compensation and prayed for setting aside the award of the Tribunal.

5.Per contra, the learned counsel appearing for the 1st respondent contended that the accident has occurred only due to rash and negligent driving by the driver of the car belonging to the 2nd respondent. The 1st respondent examined himself and proved the negligence on the part of the driver of the car belonging to the 2nd respondent. FIR is registered only against the driver of the car belonging to the 2nd respondent. The 1st respondent has proved the loss of income due to the injuries. The amounts received by the 1st respondent from the Star Health Insurance is a different scheme and the same cannot be deducted from the medical expenses incurred by him and prayed for dismissal of the appeal.

6.The contention of the learned counsel appearing for the 2nd respondent is that the Tribunal erred in ordering pay and recovery on the ground that the 1st respondent did not produce the driving license of the driver of the car belonging to the 2nd respondent. The 2nd respondent remained exparte before the Tribunal. The learned counsel appearing for the 2nd respondent submitted that he will file an appeal challenging the order of pay and recovery and he will file the driving license in the appeal filed by him. The vehicle was insured with the appellant. In any event, the Tribunal ought to have directed only the appellant only to pay the compensation. He also submitted that

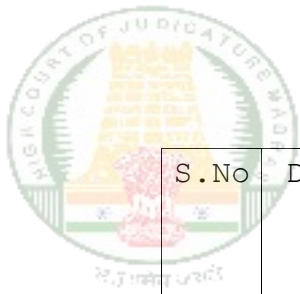


the 1st respondent/claimant also filed an appeal challenging the order of pay and recovery.

7. Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and 2nd respondent and perused all the materials on record.

8. From the materials on record, it is seen that the 1st respondent has contended that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 2nd respondent. To prove the said contention, he examined himself as P.W.1 and marked FIR. The appellant or the 2nd respondent has not let in any evidence to prove that the accident has occurred due to rash and negligent driving by the 1st respondent or the 1st respondent also contributed negligence to the accident. In view of the same, the finding of the Tribunal that the accident has occurred only due to rash and negligent driving by the driver of the car belonging to the 2nd respondent is not erroneous. The driver of the 2nd respondent had no driving license at the time of accident and the Tribunal ordered pay and recovery. I do not find any error in the said finding warranting interference by this Court.

9. As far as the quantum of compensation is concerned, from the materials on record, it is seen that the compensation awarded by the Tribunal is not excessive, except the amount awarded under the head of medical expenses. The learned counsel appearing for the appellant contended that a sum of Rs.1,00,000/- was directly paid to the Hospital towards medical expenses by the Star Health Insurance and only the balance amount was paid by the 1st respondent towards medical expenses. To prove the same, the appellant examined R.W.1 and R.W.2. The 1st respondent has not denied the payment made by the Star Health Insurance. On the other hand, his contention is that the amount paid towards Star Health Insurance is paid out of his income as per the Rules and hence, the amount received from the Star Health Insurance cannot be deducted from the medical expenses awarded by the Tribunal. The contention of the learned counsel appearing for the 1st respondent is without merits. Having received a sum of Rs.1,00,000/- from the Star Health Insurance towards medical expenses, the 1st respondent is not entitled to claim the said amount in the claim petition. The Tribunal erred in rejecting the contention of the appellant that a sum of Rs.1,00,000/- paid by the Star Health Insurance has to be deducted and the 1st respondent is entitled to only a sum of Rs.1,58,099/- towards medical expenses. The amount granted by the Tribunal towards other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	2,91,600/-	2,91,600/-	confirmed
2.	Pain and suffering	25,000/-	25,000/-	confirmed
3.	Nutrition expenses	10,000/-	10,000/-	confirmed
4.	Partial loss of income	27,000/-	27,000/-	confirmed
5.	Attender charges	10,000/-	10,000/-	confirmed
6.	Medical bills	2,58,099/-	1,58,099/-	reduced
7.	Transport bills	38,000/-	38,000/-	confirmed
8.	Two wheeler repair bills	6,618/-	6,618/-	confirmed
	Total	6,66,317/- rounded off to 6,66,300/-	5,66,317/- rounded off to 5,66,300/-	Reduced by Rs.1,00,000/-

9. In the result, the appeal is partly allowed and the compensation granted by the Tribunal at Rs.6,66,300/- is reduced to Rs.5,66,300/- along with interest and costs. The appellant-Insurance Company is directed to deposit the modified award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1123 of 2013 at the first instance and recover the same from the 2nd respondent. On such deposit, the 1st respondent/claimant is permitted to withdraw the modified award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.1123 of 2013. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar



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To

1.The Special Subordinate Judge,
(Motor Accidents Claims Tribunal),
Krishnagiri.

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

+1cc to Mr.M/s.Mukund R.Pandian, Advocate SR.No.38372

C.M.A.No.2447 of 2015
and M.P.No.1 of 2015

RSK (CO)
GMY (09/10/2019)