IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2019

Pronounced on : 25.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.254 of 2012
and
MP.No.1 of 2012

The Oriental Insurance Company Ltd.,
No.547, Gandhi Road, First Floor,
Kancheepuram - 631 501. ... Appellant

Versus

1.V.Panneerdoss

2.S.Nijamudeen ... Respondents

[Second respondent set exparte in the Lower Court.
Hence, notice is dispensed]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.04.2011 made in M.C.O.P.No.103 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Maduranthakam.

For Appellant : Mr.R.Sivakumar

For Respondents: No Appearance (for R1)
: Exparte (for R2)

JUDGMENT

The appellant/Insurance company has preferred this appeal challenging the award dated 12.04.2011 made in M.C.O.P.No.103 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Maduranthakam.

2.The brief facts of the case of the first respondent/claimant are as follows:-

On 23.08.2009, at about 9.45 hours, when the claimant was riding his motorcycle bearing Regn.No.PY-01, AN 5843 from Munnakulam to Acharapakkam in Velliambakkam Salai, the driver of the Mini Bus bearing Regn.No.TN-43-Z-2307 was driven by its driver in a rash and negligent manner and dashed against the claimant. As result, the claimant sustained fracture and injuries all over the body besides damages caused to the property worth about Rs.4,000/-. At the time of accident, the claimant was working as Salesman in TASMAC wine shop and earning of Rs.6,000/- as monthly income. After the accident, the claimant was unable to do his work as before the accident. Therefore, the claimant filed the claim petition in M.C.O.P. No. 103 of 2009 before the Tribunal, claiming a sum of Rs.5,00,000/- as compensation.

2.The second respondent remained exparte before the Tribunal.

3.The insurance company opposed the claim petition by contending that the claimant who drove the vehicle in a rash and negligent driving and contributed to the accident, therefore, the claimant is not entitled to seek any compensation from the appellant/Insurance company. That apart the insurance company denied all the averments made in the claim petition with respect to the age , income, nature of the injuries sustained by the claimant and prayed for dismissal of the claim petition.

4.Before the Tribunal, the claimant examined himself as PW.1, besides examining one Dr. Kannan Isan as PW.2. There were ten documents marked as Ex.P1 to P10. On the side of the respondents, neither oral nor documentary evidence was adduced.

5.Considering the oral and documentary evidence adduced before the Tribunal, taking note of the oral evidence of PW.1 coupled with Ex.P1 and P2 the Tribunal has held that the accident taken place only due to rash and negligent driving of the driver of the Mini Bus. Accordingly, the said findings on the rash and negligence on the part of the driver of the offending vehicle is hereby confirmed.

6.On the point of quantum, the learned counsel appearing for the appellant/Insurance company would contend that a sum of Rs.2,68,125.80/- granted towards medical expenses is excessive. On perusing the evidence of Ex.P3/Discharge summary issued by the Chengalpet, Government Hospital, Ex.P4/Discharge summary issued by the Balaji Hospital, Ex.P9/Disability certificate issued by the Doctor/PW.2, the Tribunal has fixed the disability at the rate of 50%, which is onerous. Accordingly, the Tribunal awarded a sum of Rs.3,78,125/- as compensation to the claimant.

7.The learned counsel appearing for the appellant/Insurance company would further contend that though Ex.P6 series/medical bills was not proved by examining any one concerned with the hospital, inspite of the same, the Tribunal medical expenses and it is on the higher side. Therefore, the learned counsel for the appellant / Insurance company has prayed for reducing the award of the Tribunal.

8.On the above contention, this Court heard the counsel for the claimant, who justified the award passed by the Tribunal and prayed for dismissal of the appeal.

9. Heard the counsel for both sides and perused the materials placed on record.

10.After going through the records, it is seen from the records, at the time of accident, the claimant was aged of 26 years and he was working as a Salesman in TASMAC wine shop and earning of Rs.6,000/- as monthly income. After the accident, the claimant was unable to do his work as before the accident. As per the deposition of the Doctor/PW.2, the claimant suffered C1 Anterior arch fracture on left side with rotary sub luxation of C1 over C2, Congenital cervical spine anomaly, Occipitilization of Atlas on left side, C2-C3 Block vertebra, compression fracture of D4 vertebral body, fracture left transverse process of D4, Fracture left first rib, diastatic fracture coronal suture, fracture on nasal bone, head injury and multiple injuries all over the body.

11.One of the contentions urged on behalf of the appellant/ Insurance Company is that the medical bills under Ex.A6 were merely produced and they were not proved in accordance with law. On perusal of Ex.P6 medical bills which were produced by PW.1, the Tribunal found that they were in fact issued to the claimant during the time of his treatment. This Court also perused the records received from the Court below, particularly, Ex.P6 series issued by Balaji Hospital and there is nothing to disbelieve the same. This is more so that the bills produced by the claimant tallies with the period during which he had taken treatment and the name of the claimant and the medicines prescribed corresponding to the injuries suffered by the claimant. Therefore, the contention of the appellant that the claim made by the claimant under Ex.P6 are bogus and not in accordance with law is not sustainable. Therefore, the Tribunal is justified in reimbursing Ex.P6/medical bill of Rs.2,68,125.80/- is fair and reasonable. Hence, this Court does not find any reason to interfere with the amount awarded by the Tribunal towards medical bills. As regards the other amount awarded under the conventional heads, this Court is of the opinion that they are fair and proper compensation and the same is hereby confirmed.

12.In the result, the Civil Miscellaneous Appeal filed by the appellant/Insurance company is dismissed by confirming the

Judgement and Decree dated 12.04.2011 made in M.C.O.P.No.103 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Maduranthakam. The appellant/Insurance Company is directed to deposit the amount as determined by the Tribunal together with interest 7.5%, after adjusting amount, if any, already deposited within a period of eight weeks from the date of copy of this Judgment. On such deposit being made, the claimant/first respondent is entitled to withdraw the same with accrued interest, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

klt

To

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

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

+1cc to Mr.R.Sivakumar, Advocate SR.No.27907

C.M.A.No.254 of 2012
and
MP.No.1 of 2012

VSN II(CO)
GMY(22/08/2019)