IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1497 of 2015
and
M.P.No.1 of 2015

Divisional Manager,
United India Insurance Co.Ltd.,
No.5-B/11, SBI Upstairs,
Salem Road,
Rasipuram - 637 408. ... Appellant/2nd Respondent

Vs.

1. Marayee ..1st Respondent/Petitioner
2. K.V.Murugesan ..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.10.2014 made in M.C.O.P.No.557 of 2013 on the file of The Motor Accidents Claims Tribunal, Additional District Court, Namakkal.

For Appellant : Mr. S.Arunkumar
For R1 : Mr.C.Kulanthaivel

J U D G M E N T

This appeal is preferred by the Insurance Company against the award of a sum of Rs.4,75,400/- towards compensation to the first respondent/claimant due to the injuries sustained by him in a motor vehicle accident.

2. The case in brief is as follows:

On the fateful day, i.e., on 28.12.2012, at about 6.00 pm, the first respondent/claimant was walking along the left side of the Namakkal - Salem Main Road. When he reached near Perumal Koil Medu, the two wheeler bearing Reg.No.TN-34-E-5383 belonging to the second respondent and insured with the appellant insurance company, came in a rash and negligent manner and hit against her. Due to the said impact, the first respondent/claimant sustained grievous injuries, for which, she 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.4,75,400/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3. The learned counsel for the appellant Insurance Company has disputed the liability fastened on the insurance company on the ground that the rider of the motorcycle did not possess a valid driving licence and hence, he was not covered by any risk, pursuant to the insurance of the vehicle, on the date of the accident. Further he submitted that the Tribunal has erred in holding that the accident had occurred due to the rash and negligent riding of the rider of the two wheeler. On the other hand, he submitted that the compensation awarded by the Tribunal is excessive, exorbitant and disproportionate to the injuries sustained by the first respondent.

4.Per contra, the learned counsel for the first respondent/claimant has submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

5.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the materials available on record carefully and meticulously.

6. The claimant examined herself as P.W.1. According to her, the accident had occurred only due to the rash and negligent act on the part of the rider of the two-wheeler. The testimony of P.W.1 was corroborated by Ex.P1-First Information Report, which was registered against the rider of the two wheeler stating that he was responsible for the accident. Further, Ex.P4-Motor Vehicle Inspector's Report disclosed that the accident had not occurred due to any mechanical fault. Placing reliance on those oral and documentary evidence, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent riding of the rider of the two wheeler, which factual finding this Court is not inclined to interfere.

7.The next aspect to be considered herein is the liability of the appellant to pay compensation. Before the Tribunal, the Assistant Manager of the Insurance Company has been examined as R.W.1, who deposed before the Tribunal that the rider of the two wheeler was not possessing the valid and effective driving licence at the relevant point of time and hence there was violation of policy conditions. Ex.R1 is the copy of the insurance policy. In the absence of any concrete material to prove the contention of the appellant that the rider of the two wheeler did not possess effective driving licence at the time of accident, the Tribunal rejected the contention put forth on the side of the Insurance Company in this connection and fixed the liability liability on the appellant insurance company, which warrants no interference by this Court.

8.As regards the quantum of compensation awarded by the Tribunal, the first respondent/claimant herself examined as P.W.1, who deposed that she was aged 55 years and and was earning a sum of Rs.10,000/- per month. However, no authenticated document was filed to prove the same. P.W.2/Doctor, who examined the claimant, deposed in his evidence that the first respondent/claimant sustained grievous and multiple injuries all over the body. After assessing the first respondent/claimant, the Doctor fixed the percentage of disability of the claimant at 40% and issued Ex.P9-Disability Certificate to that effect. Ex.P2-wound certificate, Ex.P5-medical bills and Exs.P7 & 8-X-rays, reveals the first respondent/claimant sustained multiple injuries. Taking note of all these factual scenario, the Tribunal has rightly fixed the monthly income of the injured at Rs.5,000/-, arrived at the annual income at Rs.60,000/- (5000 x12), adopted the multiplier of 11 and quantified the compensation under the head “loss of income due to disability” at Rs.2,64,000/- (60,000/- x 11 x 40/100), besides awarding Rs.86,444/- towards medical expenses as per Ex.P5; Rs.5,000/- towards transportation; Rs.10,000/- towards extra nourishment and Rs.10,000/- towards attender charges. Having regard to the nature of the injuries sustained by the first respondent/claimant, the amounts so awarded by the Tribunal under the above heads, are very reasonable and hence the same are hereby confirmed. But, this Court is of the considered view that the amounts awarded by the Tribunal at Rs.50,000/- each towards future medical expenses and pain and suffering, are on the higher side and it would be appropriate to reduce the same to Rs.25,000/- each.

9.Thus, the compensation awarded by the Tribunal stands reduced to Rs.4,25,400/- with interest at the rate of 7.5% per annum from the date of petition. The appellant Insurance Company is directed to deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

10.The Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.TheAdditional District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

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

+1 cc to Mr.S.Arunkumar, Advocate,sr.86550

+1 cc to Mr.C.Kulanthaivel, Advocate,sr.86647.

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