

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.02.2019
CORAM:
THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN
C.M.A.No.876 of 2011 and
M.P.No.1 of 2011

United India Insurance Company Limited,
No. 1170, Mettur Road,
Muthiah Complex,
Erode.

...Appellant/2nd Respondent

Vs.

1.Thangammal
2.M.L.J.Xavier

... 1st Respondent/Petitioner

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 18.09.2010, in M.C.O.P.No. 33 of 2009 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) at Namakkal.

For Appellant : Mrs.R.Sreevidhya
For Respondents : Mr.K.Rajasekaran
for R1
R2 - Given up

JUDGMENT

This Civil Miscellaneous Appeal is filed by the United India Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 33 of 2009 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) at Namakkal.

2. The brief case of the first respondent/claimant is as follows:

On 17.11.2005, at about 07.30 pm, the injured was walking along Jadarpalayam - Velur Main road. At that time, a motorcycle bearing Registration No. TAU 9029, belonging to the second respondent herein, hit her, as a result of which, she sustained grievous injuries all over her body. According to the first respondent/claimant, the rash and negligent driving of the rider of the said motorcycle was the cause of the accident, and that, since, the said motorcycle was insured with the present

appellant, both the owner of the said motorcycle and the present appellant, are jointly and severally liable to pay compensation of Rs.5,00,000/- to him.

3. The learned Tribunal, after analysing the evidence on record, awarded a compensation of Rs.1,70,847/- together with interest at the rate of 7.5% per annum to the first respondent/claimant. Aggrieved over the quantum of compensation awarded by the Tribunal, the United India Insurance Company have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mrs.R.Sreevidhya, learned counsel appearing for the appellant would vehemently contend that the second respondent herein, who was the owner of the motorcycle has sold the same to the third party on the date of the accident, i.e., 17.11.2005 and therefore, the United India Insurance Company, the appellant herein, cannot be fastened with liability to pay compensation to the first respondent/claimant.

5. Per contra, Mr.K.Rajasekaran, learned counsel appearing for the first respondent/claimant would contend that, for the injuries sustained by the first respondent/claimant, Thiru. Kannappan (PW2) was examined and the first respondent/claimant has also produced the X-ray (Ex.P8) and the Wound Certificate (Ex.P9). The first respondent/claimant has also marked Medical bills (Ex.P5) and Doctor's medical report (Ex.P6) as a proof for the treatment that has been given to her immediately after the accident.

6. After hearing both the parties and going through the available records, I find that the factum of the accident is not disputed. The nature of injuries of the first respondent/claimant has been spoken by Thiru. Kannappan (PW2) and also exhibits P6, P7, P8 and P9 were marked to substantiate the contention of the first respondent/claimant. It appears from the records of the Tribunal that the percentage of disability was taken up at 28% and Rs.2,000/- was awarded per percentage i.e., in toto Rs.56,000/- had been awarded towards disability. With regard to the injuries sustained by the first respondent/claimant, two of them are classified to be grievous in nature and accordingly, sum of Rs.15,000/-, Rs.20,000/-, and Rs.10,000/- are awarded towards extra nourishment, pain and sufferings and transportation respectively.

7. Taking into consideration, the evidence of Thiru. Kannappan (PW2) and also considering the fact that the first respondent/claimant has suffered mis-joinder of bones, the compensation awarded by the Tribunal cannot be said to be on the higher side. More particularly, the learned counsel appearing

for the appellant - Insurance Company has made a claim that on the date of the accident, the first respondent/claimant is not the owner of the vehicle. However, no such plea has been raised before the Tribunal. Therefore, the point which has not been raised in the counter statement, in the absence of any evidence to that effect, cannot be gone into at this juncture. In view of the above, the plea raised by the appellant stands negative.

8. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) It is brought to the notice of this Court that, the entire compensation awarded by the Tribunal has already been deposited. The first respondent/claimant is at liberty to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Namakkal.

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

+1cc to Mrs.R.Sreevidhya, Advocate sr.no.13044

C.M.A.No.876 of 2011 and
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mr(co)
nr 07/05/2019