IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 19.03.2019

Judgment Pronounced on : 08.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.703 of 2012
and
MP.No.1 of 2012

M/s.National Insurance Company, Ltd.,
D.O., Service Convent Building,
No.12-A, Sub-Collector's Office Road,
Opp.to District Court,
Dindigual - 624 001. ... Appellant

Versus

1.Vilvaraj

2.D.Senthil ... Respondents

[R1 & R2 called absent made ex-parte,
hence, notice to R2 is dispensed with]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Decree and Judgment dated 29.08.2011 passed in MCOP.No.117 of 2005 on the file of the Motor Accident Claims Tribunal (Additional Sub-Judge), Attur and to exonerate the liability of the appellant.

For Appellant : Mr.G.Udayasankar

For Respondents : No Appearance - R1

: Exparte - R2

JUDGMENT

The Insurance company is the appellant herein, who has preferred this appeal to exonerate them from the liability, apart from, challenging the quantum of compensation.

2.The first respondent herein is the claimant, who has filed the claim petition in MCOP.No.117 of 2005 and it is the case of the claimant that on 21.09.2003, at about 9.00 pm., while he was riding his Hero Honda motorcycle bearing Registration No.K.A-05-R-9948 on the extreme left side of the road from Malliakarai to Thammampatty and proceeding to Periya gounder thottam, a Tractor bearing Registration No.TDM-7088 came from behind in a high speed in a rash and negligent manner and hit the motorcycle of the claimant. As a result of the said collision, the claimant sustained multiple fracture and grievous injuries all over his body. Immediately, he was taken to Salem, Shri Sellappa Hospital, where he took treatment as an in-patient from 21.09.2003 to 03.10.2003 and he also underwent surgery for the injuries sustained in the said accident. Therefore, the claimant/first respondent herein filed the above said claim petition, claiming a sum of Rs.3,00,000/- as compensation.

3. In the counter statement filed by the appellant/Insurance company before the Tribunal, it is the specific defence of the Insurance company that the Tractor was parked on the left side of the road as it was mechanically broke-down. The driver of the Tractor had taken all the precautions to avoid the accident, such as putting parking light indicator, placing stones surrounding all the tyres of the Tractor. Hence, when the offending vehicle was parked on the extreme left side of the road, observing all the traffic rules and regulations along with alarming parking light, the rider of the two wheeler, who has driven the motorcycle in rash and negligent manner, dashed against the parked Tractor from behind, without noticing the precautions taken by the driver of the Tractor. Therefore, the appellant/Insurance Company cannot be fastened with the liability and prayed for dismissal of the claim petition.

4. During the trial, before the Tribunal, the claimant examined himself as PW.1 and one Dr.Muthuswamy was examined as PW.2 and documents Exs.P1 to 12 were marked. On the respondent's side, three witnesses were examined as RW.1 to RW.3 and Exs.R1 to R6 documents were marked.

5.The main contention raised by the learned counsel appearing for the appellant/Insurance company is that the Tractor was parked on the left side of the road and without noticing the parking lights which were 'on', the rider of the motorcycle/claimant came in a rash and negligent manner dashed against the parked Tractor from the behind and hence, he is a tort-feasor and he cannot claim any compensation from them. Therefore, he prays to exonerate the appellant from the liability and also submitted that the quantum of compensation is on the higher side.

6.On perusing the evidence of PW.1/claimant and especially Ex.P1/FIR, wherein he stated that he was riding on the left side of the road and the Tractor, driven by its driver in a rash and negligent manner dashed against him in the front side. After perusing the rough sketch of the accident place, which was marked as Ex.P4 and the damages and scratches of the Tractor and the damages of the two wheeler, report was marked under Exs.P5 & P6 respectively by the Motor Vehicle Inspector. The Tribunal observed the overall conspectus of the case and came to the conclusion that the driver of the Tractor had driven the vehicle in a rash and negligent manner, which was the cause of accident and awarded a sum of Rs.1,62,500/- as compensation to the claimant.

7.It is the contention of the learned counsel appearing for the appellant/Insurance company has re-emphasized his contention and drawn the attention of this Court to Ex.R1/ Copy of the Judgment in C.C.No.245 of 2003, wherein the Criminal Court has acquitted the driver of the Tractor. It remains to be stated that the standard of proof required before the Criminal Court is that the guilt has to be proved beyond reasonable doubt, while in the matter of compensation before the Motor Accidents Tribunal, it is only the preponderance of probability. There is no positive evidence to show that the Tractor was parked and nothing is reiterated on the side of the driver of the Tractor to show that his vehicle was parked. Hence, the plea raised by the Insurance company in the counter statement is not substantiated.

8.The next contention raised by the learned counsel appearing for the appellant/Insurance company is that RW.1/driver of the Tractor was examined before the Court and hence the Tribunal has committed an error in not considering his statement. This Court has given its anxious consideration for the said contention. On perusing of the evidence of RW.1 and Ex.P4/rough sketch, this Court is of the considered view that the said version of RW.1 is only a self-serving statement to save his skin. Ex.R4/Investigation report is said to have been given by the owner of the vehicle. However, he was not examined before the Tribunal, which fact also assumes significance.

9.The evidence of PW.1 and also considering the fact that the driver of the vehicle RW.1, who had deposed that he is a hearsay witness, would also go against the Insurance company. The finding of the Tribunal that the accident has taken place due to rash and negligent driving of the driver of the Tractor, on different analysis of the above, is hereby confirmed. Consequently, the Insurance company is also liable to pay compensation, in view of the existing of the policy coverage.

10.Based upon the medical record, Ex.P9/X-ray, the doctor has opined that the claimant has suffered 40% of disability. Ex.P11/permanent disability certificate issued by

PW.2/Dr.Muthuswamy coupled with the discharge summary/Ex.P7, shows that he suffered left chest bone fracture, a cut injury on the left thigh and bone fracture. Due to his left chest bone fracture, he underwent surgery and also he suffered movement of his left ankle at 15 degree and hence, permanent disability was assessed at 40% by the Doctor/PW.2 and it was rightly accepted by the Tribunal.

11.However, the Tribunal granted Rs.2,000/- per percentage of disability. This Court taking note of the date of the accident grants Rs.1,500/- per percentage and accordingly for 40% of disability a sum Rs.60,000/-is hereby awarded towards disability and for Pain and suffering instead of Rs.25,000/- granted by the Tribunal, a sum of Rs.20,000/- is hereby awarded. Under the head Transportation charges and extra-nourishment, the Tribunal jointly awarded a sum of Rs.5,000/-which is splitted into two separate heads and a sum of Rs.5,000/- is hereby awarded under each of the head.

12.The Tribunal awarded, a sum of Rs.50,000/- towards medical expenses, on the basis of the medical bills and a sum of Rs.2,500/- towards Attender charges, which in the opinion of this Court, is a fair and reasonable compensation and the same are not disturbed and are hereby maintained. Thus, the compensation to be awarded to the claimant is hereby modified and reduced as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Permanent disability	Rs.80,000/-	Rs.60,000/-
Pain and suffering	Rs.25,000/-	Rs.20,000/-
Transportation & Nourishment	Rs.5,000/-	-
Transportation	-	Rs.5,000/-
Extra-nourishment	-	Rs.5,000/-
Medical expenses	Rs.50,000/-	Rs.50,000/-
Attender charges	Rs.2,500/-	Rs.2,500/-
Total	Rs.1,62,500/-	Rs.1,42,500/-

13. In the result, the appeal filed by the Insurance Company is partly allowed by reducing the compensation awarded by the Tribunal from Rs.1,62,500/- to Rs.1,42,500/-.

(i) The Insurance Company is directed to deposit the amount of Rs.1,42,500/- together with costs and interest at the rate of 7.5% per annum, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment.

(ii) If there is any excess amount deposited by the Insurance company, the appellant is at liberty to withdraw the same.

(iii) On such deposit, the claimant is entitled to withdraw the entire amount as determined in this appeal with accrued interest. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal (Additional Sub-Judge), Attur.

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

+1cc to Mr.G.Udaya Sankar, Advocate Sr.57837

C.M.A.No.703 of 2012
and
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