

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.08.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3121 of 2013
and M.P.No.1 of 2013

United India Insurance Co. Ltd.,
Represented by its Branch Manager,
Hosur.

... Appellant/2nd respondent

Vs.

1.K.Raja ... 1st Respondent/ Petitioner
2.Chanchal Kumari ... 2nd Respondent/1st respondent
(R2 exparte before the Tribunal)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and Decree dated 01.12.2011 made in M.C.O.P.No.183 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Krishnagiri.

For Appellant : Mr.S.Arunkumar

For R1 : Mr.M.Sriram

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order and decree dated 01.12.2011 passed by the Motor Accidents Claims Tribunal, Additional Subordinate Court, Krishnagiri, in M.C.O.P.No.183 of 2008.

2.The case in brief is as follows:

On 29.09.2007, when the 1st respondent/claimant was driving a Mini Lorry bearing Registration No.KA 01 7129, belonging to the 2nd respondent herein and insured with the appellant herein slowly and carefully on M.D.Pura Ring Road, a Cyclist, who was going in front of the Mini Lorry, suddenly crossed the Road. To avoid hitting the Cyclist, the 1st respondent/claimant swerved the Mini Lorry, due to which, the Mini Lorry got capsized on the road side. As a result of the same, the first respondent/claimant sustained grievous injuries. Hence, he filed a claim petition claiming a compensation of Rs.7,50,000/-. The Tribunal on consideration of the materials and evidence available on record, awarded a total compensation of Rs.2,27,540/- with interest at 9%pa from the date of petition,

which shall be payable by the appellant insurance company first and thereafter recover the same from the owner of the vehicle. Challenging the same, the appellant / Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant submitted that the Tribunal has erred in awarding a disproportionate compensation without appreciating the pleadings and the nature of the claim. The learned counsel further submitted that the rate of interest awarded by the Tribunal is excessive and exorbitant and the same has to be reduced.

4.Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record. The Court papers disclose that though notice was sent to the second respondent, it was returned unserved. However, considering the passage of time, this appeal is taken up for final disposal, on merits.

5.As regards the negligence, the first respondent/claimant/P.W.1 has categorically stated in the claim petition as well as in his evidence that in order to avoid colliding with the Cyclist, who was going in front of the Mini lorry, the driver of the Mini lorry suddenly applied break and turned the vehicle, due to which, it got capsized and he sustained grievous injuries. The statement so made by the first respondent/claimant was seriously refuted on the side of the appellant insurance company, according to whom, there was no cyclist going in front of the mini lorry at the time of accident and the claim made was a false one. Ex.P1 First Information Report which was registered against the first respondent/claimant/driver of the Mini Lorry, as per which, due to his rash and negligent driving, the accident had occurred. Basing reliance on the same and also considering the fact that the mini lorry was insured with the appellant insurance company and the insurance policy was in force, the Tribunal had come to a conclusion that the accident had occurred due to the rash and negligent act on the part of the driver of the mini lorry i.e., first respondent/claimant and accordingly, fastened the liability on the appellant insurance company with a right to pay and recovery, which finding this Court is not inclined to interfere, as the same is based on the materials and evidence available on record.

6.Regarding the quantum of compensation, the Tribunal has awarded Rs.75,140/- towards Medical Expenses, based on Ex.P3 medical bills; Rs.6,400/- towards Transportation Expenses, as per Ex.P4 Taxi bill; Rs.3,000/- towards Extra Nourishment, Rs.3,000/- towards Attenders Charges, Rs.1,20,000/- towards future loss of income, based on Ex.P9 permanent disability; Rs.10,000/- towards loss of Amenities and Rs.10,000/- towards

pain and suffering and thus, in total Rs.2,27,540/-. This Court is of the view that the compensation awarded by the Tribunal under the said heads are just and reasonable and hence, the same need not be interfered. Further, the rate of interest awarded by the Tribunal at 9%p.a. seems to be fair and just and hence, the same warrants no interference at the hands of this Court.

7.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant / Insurance Company is directed to deposit the compensation amount, as awarded by the Tribunal, with interest and costs, after deducting 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 Tribunal is directed to transfer the amount lying in the deposit to the bank account of the first respondent/claimant through RTGS, within one week thereafter. It is made clear that the appellant insurance company shall have a right to recover the award amount from the owner of the vehicle, in the manner known to law.

Sd/-

Assistant Registrar (co mdu)

//True Copy//

Sub Assistant Registrar

rna/rk
To

1.The Motor Accidents Claims Tribunal,
Additional Subordinate Court,
Krishnagiri.

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

+1cc to Mr.Mukund R.Pandian , Advocate SR.No. 70605

+1cc to Mr.S.Arun kumar , Advocate SR.No. 71489

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A.SK(21/09/2020)