

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.358 of 2016
& C.M.P.No.2627 of 2016

M/s. United India Insurance Co. Ltd.,
C.G.Complex,
No.139 Kumaran Road,
Tirupur 641 601

... Appellant/2nd Respondent

...Vs...

1. Mr. K.Muniyappan1st Respondent/Petitioner

2. Mr. Palanisamy 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 06.08.2015, made in MACTOP No.830 of 2011 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.2, Salem District.

For Appellant : Mr. J.Chandran

For Respondents : Mr. S.P.Yuvaraj, for R-1

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant / Insurer / Insurance company challenging the liability as well as the quantum of compensation awarded by the Tribunal.

2. It is the case of the claimant / R-1 that on 14.01.2011 at about 05.30 pm, when he was riding his Tata Ace vehicle, on Tirupur to Perumanallur Main Road, near Pichampalayampudur Bridge, the second respondent's (herein) lorry bearing Registration No.TN38-B-1111, which came against the claimant's vehicle, in a rash and negligent manner, dashed against the claimant's vehicle. Hence, the claimant sustained multiple injuries and fractures all over his body. Immediately he was given first aid treatment and later referred to Kunrunji Hospital, Salem, for further treatment. Stating so, the claimant has filed a claim petition before the Tribunal claiming

Rs.5,00,000/- as compensation against the appellant and R-2 herein. A counter statement has been filed by the appellant herein before the Tribunal denying the averments made in the claim petition. After elaborate trial, the Tribunal has fixed the negligence on the driver of the second respondent's (herein) lorry bearing Registration No.TN38-B-1111 and since the policy was in force, the Tribunal directed the appellant herein to pay the compensation of Rs.2,18,500/-, aggrieved by which, the appellant is before this Court.

3. Heard the learned counsel for the appellant / Insurer and the learned counsel for the first respondent / claimant (contesting respondent). Despite ordering notice twice, the second respondent / Insured has not been served till now and hence this Appeal itself is taken up for final disposal, considering the paucity of time.

4. The main contention of the learned counsel for the appellant / Insurance Company is that the Insurer should have been totally exonerated from the liability, as the driver of the second respondent's (herein) lorry bearing Registration No.TN38-B-1111 had no badge / endorsement to drive the 'Transport Vehicle'; in other words, the learned counsel submitted that the driver of the Mini Lorry does not possess valid driving licence with endorsement or badge to drive the vehicle at the time of accident; that the Tribunal ought to have appreciated the evidence of R.W.1 and Exs.R-1 to R-4 marked on the side of the appellant and ordered for pay and recovery at least; and the Tribunal has erred in granting a sum of Rs.2,18,500/- as total compensation payable.

5. Per contra, the learned counsel for the first respondent / claimant submitted that the negligence aspect of the accident is proved beyond reasonable doubt and the claimant sustained injuries only due to the rash and negligent driving by the driver of the Mini Lorry and hence the findings of the Tribunal may not be interfered with. He further submitted that Tribunal has considered each and every aspect into consideration and has awarded the compensation, which does not require any interference by this Court.

6. At the outset, it has to be pointed out that the argument of the learned counsel for the appellant that the driver of the second respondent did not possess a valid driving licence at the time of accident is not necessary no longer survives for consideration, in the light of the decision of the Hon'ble Supreme Court in [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,] reported in AIR 2017 SC 3668, wherein it has been held that a person who has a valid licence to drive a light motor vehicle can drive a vehicle of same category and obtaining endorsement or badge is not necessary. In view of the Judgment of the Hon'ble Supreme Court referred to above, the appellant/Insurance Company cannot be exonerated from its liability on the ground that the driver of the insured vehicle

did not obtain endorsement or badge. Hence, the appellant / Insurance Company is liable to pay the compensation. However, in the evidence of R.W.1-Jayavel from Insurer, he has deposed that Ex.R-1-notice was sent to the second respondent owner of the vehicle and Ex.R-2-notice was sent to the driver of the Mini Lorry, which were returned. Hence, the Insurer had made attempts to serve the owner and driver of the Mini Lorry to examine them as one of the witnesses to disprove the claim made by the claimant. In such view of the matter, this Court is of the view that the Tribunal ought to have given recovery rights to the appellant.

7. As far as the quantum of compensation is concerned, the Tribunal considering the pleadings, oral and documentary evidence has awarded the total compensation at Rs.2,18,500/- under different heads, viz., 40% disability, pain and suffering, Medical expenses, Extra nourishment, Transport expenses, attendant charges and loss of clothes of the injured. P.W.2-Doctor, in his evidence, has stated that plates and screws have been fixed on the left knee of the claimant. He further deposed that there is 15 degrees scar on the operated area of the knee and the claimant could not sit in cross-legs and he is facing difficulty while doing heavy works. Hence the Doctor has assessed the disability at 40% and the Tribunal has awarded Rs.80,000/- under the head 'permanent disability' and also awarded compensation amounts under other heads, as stated supra. This Court is of the view that the quantum arrived at by the Tribunal commensurates with the settled principles of law, weightage of evidence, probabilities of case and II Schedule of the Motor Vehicles Act. Thus, this Court finds no error in the findings rendered on quantum by the Tribunal warranting interference by this Court.

8. In the result, this Civil Miscellaneous Appeal filed by the appellant / Insurer is partly-allowed, with liberty to the appellant to recover the compensation amount from R-2. No costs. Consequently the connected CMP is closed.

9. The appellant / Insurance Company shall deposit the entire compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment, however with liberty to the appellant to recover the amount from the owner of the Mini Lorry / R-2 herein, in the same proceedings. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant / first respondent herein, through RTGS, within one week thereafter.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

srk

To

1. The Special Subordinate Judge NO.2,
Motor Accident Claims Tribunal,
Special Subordinate Court No.2,
Salem District.

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

+1cc to Mr.J.Chandran, Advocate SR.No.97121

+1cc to Mr.S.P.Yuvaraj, Advocate SR.No.96403

C.M.A.No.358 of 2016
& C.M.P.No.2627 of 2016

BR(CO)
GMY(15/06/2020)



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