IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.708 of 2016
and
C.M.P.No.5709 of 2016

M/s.Cholamandalam MS General Insurance Co.Ltd.,
Dare House, 2nd Floor,
N.S.C.Bose Road,
Chennai-600 001. ... Appellant

Vs

1.Kulandairaj

2.Kunjithapatham ... Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 23.12.2014 made in MCOP No.338 of 2012 on the file of the Motor Accidents Claims Tribunal, (Subordinate Court), Perambalur.

For Appellant : Mr.N.Vijayaraghavan

For R1 : Mr.T.Gobinath
R2 : Exparte

JUDGMENT

This appeal has been preferred by the Insurance Company against the award of a sum of Rs.4,89,590/- 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, ie. on 29.04.2012, the first respondent / claimant was walking along with his friends on the extreme left side of the Thanjavur-Trichy Main Road. At about 12.00 p.m., near Anna Valaivu, Thuvakudi, the TATA Indica Car bearing Reg.No.TN-07-AM-4260 belonging to the second respondent and insured with appellant-Insurance company came in a rash and negligent manner and dashed against the first respondent /

claimant. Due to the said impact, he sustained grievous injuries all over the body. The first respondent filed a claim petition before the Tribunal claiming compensation for the injuries sustained. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.4,89,590/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has failed to appreciate that the vehicle was a 'transport vehicle' as per Sec.2(47) r/w Sec.2(35) of the Motor Vehicles Act and in the absence of 'transport vehicle' endorsement in the driving licence it cannot be considered as valid. It is also submitted that the Tribunal has erred in treating the vehicle as a mere 'light motor vehicle' without appreciating that it is a 'transport vehicle' for which authorisation to drive 'transport vehicle' is specifically required as per Sections 3 & 10 of the Motor Vehicles Act. Thus, according to the learned counsel, the Tribunal has erred in holding the appellant liable to pay the compensation, since the second respondent herein has violated the policy conditions by permitting a person to drive the vehicle without valid driving licence. On the other hand, he submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.The learned counsel for the first respondent has submitted that the Tribunal has rightly considered the materials and evidence and has passed the impugned judgment and hence the same does not require any interference in the hands of this Court.

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

7.The finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the Tata Indica car, is not in dispute. The contention put forth on the side of the insurance company is that the driver of the car was not possessing the valid driving licence to drive it at the relevant point of time. From the materials available on record, it is seen that the driver of the Tata Indica car belonging to the second respondent possessed driving licence to drive light motor vehicle. R.W.1-Amsavalli, Regional Transport Officer, Kumbakonam, deposed before the Tribunal that the driver of the car possessed driving licence to drive light motor vehicle and he was not having licence to drive transport vehicle or commercial vehicle. However, R.W.1 in the cross examination, admitted that the vehicle involved in the accident is a light motor vehicle, i.e.TATA Indica car. Since the second respondent was possessing the driving licence to drive light motor vehicle and as per the version of R.W.1, the car in question is a light motor vehicle, the Tribunal came to the conclusion that the Insurance Company is liable to pay compensation to the claimant. The Tribunal has correctly considered the materials and evidence and has correctly held that the Insurance Company, being the insurer of the Tata Indica car, is liable to pay compensation.

8.As regards the quantum of compensation, the Tribunal has relied upon the exhibits, evidence of witnesses, medical bills, treatment records, percentage of disability assessed by the Doctor, took note of the II Schedule of the Motor Vehicles Act and all other aspects in a proper perspective and has awarded the compensation under various heads to the claimant. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and hence the same are confirmed.

9.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gbi/km
To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Perambalur.

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

+1cc to Mr.M.B.Gopalan , Advocate SR.No. 87882
+1cc to Mr.T.Gopinath , Advocate SR.No. 88121

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A.SK(24/11/2020)