IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.72 of 2016
and
C.M.P.No.694 of 2016

United India Insurance Co. Ltd.,
Represented by its Divisional Manager,
Katpadi Road, Vellore.
.. Appellant/2nd Respondent

Vs.

1. C.Sivamoorthy ..1st Respondent/Petitioner
2. K.Venkatesan ..2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and Decree dated 23.02.2015 in M.C.O.P.No.153 of 2012 on the file of the Motor Accidents Claims Tribunal (I Additional District and Sessions Judge), Vellore.

For Appellant : Mr.A.Dhiraviyanathan

For R1 : Mr.M.Rajendiran

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award of a sum of Rs.1,38,370/- towards compensation to the first respondent, due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, i.e., on 05.05.2010 at about 1.30pm, the first respondent/claimant along with one Dhandapani was traveling in a two wheeler Suzuki from Sathuvachari to Vellore. When he was nearing Sathiya Body Work, an auto bearing Registration No.TN 23 AH 0743, belonging to the second respondent herein and insured with the appellant insurance company, came in a rash and negligent manner and dashed against the motorcycle. Due to the said impact, the first respondent sustained grievous injuries. He filed a claim petition claiming compensation of Rs.10,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,38,370/- with interest at the rate of 7.5% per annum from the date of petition. Aggrieved over the same, the appellant insurance company has filed this appeal.

3.The learned counsel for the appellant Insurance Company submitted that the driver of the auto did not possess a valid driving licence and he was not having badge at the time of the accident and hence, he was not covered by any risk, pursuant to the insurance of the vehicle, on the date of the accident. However, the Tribunal has erred in fixing the liability on the appellant insurance company. He also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.The learned counsel for the first respondent/claimant submitted that the Tribunal, after evaluating the oral and documentary evidence, has rightly fastened the liability on the appellant insurance company and awarded the just compensation and hence, the same do not call for any interference by this Court.

5.Heard the learned Counsel for the appellant and the learned counsel for the first respondent/claimant and perused the materials available on record carefully and meticulously.

6.The claimant examined himself as P.W.1, according to whom, the accident was caused due to the rash and negligent act on the part of the driver of the auto. The testimony of P.W.1 was corroborated by Ex.P1-First Information Report, which was registered against the driver of the auto stating that he was responsible for the accident. Further, Ex.P5 motor vehicle inspector's report disclosed that the accident had not occurred due to any mechanical fault. Placing reliance on those oral and documentary evidence, the Tribunal has rightly come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the auto and the same need not be interfered with by this Court.

7.The next aspect to be considered herein is the liability of the appellant to pay compensation. Before the Tribunal, one Varadhan, Junior Assistant of RTO office, Vellore and Loganathan, Deputy Manager have been examined as R.W.1 and R.W.2 and they have deposed that the driver of the auto has possessed only LMV license and not possessed the proper badge to drive a commercial vehicle and hence, there was violation of policy condition. Further, Exs.R1 to R4 documents were marked. However, in the absence of any proof that non-possession of necessary badge had contributed to the cause of the accident, the Tribunal has rightly fastened the liability on the appellant insurance company, which finding this Court is not inclined to interfere.

8.With regard to the quantum of compensation, P.W.1/first respondent/claimant stated in his claim petition that he was aged about 28 years and was earning Rs.25,000/- as a Photographer. P.W.2/doctor deposed about the disability suffered by the first respondent/ claimant and issued Ex.P9 permanent disability at 40%. As per Ex.P10-X-ray, the respondent/claimant sustained fracture on right hand and right leg. Ex.P7 is the wound certificate issued by CMC Hospital, Vellore. Having regard to those oral and documentary evidence, the Tribunal has awarded a total compensation of Rs.1,38,370/- i.e., Rs.10,500/- for loss of earning, Rs.15,000/- towards pain and suffering, Rs.80,000/- for permanent disability and Rs.32,870/- for medical expenses as per Ex.P8 consolidated Medical receipt, which, in the opinion of this Court, are fair, just and reasonable and hence, the same are hereby 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 with interest and costs, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit, the Tribunal shall transfer the amount lying in the deposit to the bank account of the first respondent/claimant through RTGS within a period of one week thereafter.

Sd/-
Assistant Registrar(ADI MDU)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
I Additional District and Sessions Judge,
Vellore.

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

C.M.A.No.72 of 2016
and
C.M.P.No.694 of 2016

PM(CO)
GMY(27/08/2020)