IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.10.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1267 of 2018
and C.M.P.No.11016 of 2018

The United India Insurance Co.Ltd.
1-15, 24H, I Floor
New Edapadi Road
Sankagiri. ... Appellant/2nd respondent

Vs

1.Kaliannan

2.Shanmugasundaram ... Respondents/ Petitioners /1st respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 10.11.2017 made in MCOP No.8 of 2011 on the file of the Motor Accidents Claims Tribunal (Sub Court), Namakkal.

For Appellant : Mr.A.Dhiraviyanathan

For Respondents : Ms.B.Manimekalai for R1
No appearance for R2

JUDGMENT

This appeal is preferred by the appellant Insurance Company against the award of a sum of Rs.71,250/- towards compensation to the first respondent, due to the injuries suffered by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 13.10.2010 at about 08.00 a.m., the first respondent was riding TVS-50 Super two-wheeler bearing Reg.No. TN-28-AF-6791 on the Trichy - Namakkal Main Road. When he was nearing Chellam Poultry Farm, C.S.P.Weigh Bridge, the lorry bearing Reg.No.TN-30-R-2556 belonging to the second respondent and insured with the appellant Insurance Company, came from behind in a rash and negligent manner and dashed against the two-wheeler. Due to the said impact, the first respondent sustained grievous injuries all over the body. The first respondent filed a claim petition before the Tribunal, claiming a sum of Rs.7,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.71,250/- 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 Insurance Company has submitted that the Tribunal has erred in fastening the liability on the Insurance Company when the fact remained that even before the date of accident, the driving licence of the lorry driver was expired and only after the accident, the same was renewed. On the other hand, it is 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 available on record and has awarded the compensation which is just, fair and reasonable and hence, the compensation awarded by the Tribunal 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.Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry and the said finding is not disputed by both sides. With regard to non-possession of valid driving licence by the driver of the lorry on the date of accident, the Junior Engineer of the Regional Transport Office, Sankagiri has been examined as R.W.1 before the Tribunal. He deposed before the Tribunal that the driving licence of the lorry driver by name Palanisamy got expired on 24.06.2010 itself and thereafter the same was renewed on 20.10.2010. In this regard, the learned counsel for the appellant has submitted that only after the accident took place on 20.10.2010, the licence was renewed on that date. Therefore, at the relevant point of time on 20.10.2010, the driver of the lorry was not possessing the driving licence. R.W.1 also deposed before the Tribunal that the said licence has been renewed after receiving the fine amount for the interregnum period. Taking note of the same, the Tribunal held that even though the driver was not possessing the valid driving licence at the relevant point of time, since there are provisions available to renew the licence within 30 days from the date of expiry on payment of necessary fine, such renewal amounts to proper renewal. In these circumstances, the Tribunal held that since the lorry has been insured with the appellant Insurance Company during the said period, the Insurance Company is liable to pay compensation for the negligence on the part of the lorry driver.

8.But, the fact remains that during the relevant point of time on the date of accident, the lorry driver was not possessing the valid driving licence, as the same got expired on 24.06.2010 and it was renewed only after the accident took place. Thus, there was violation of policy conditions on the part of the owner of the lorry, by permitting the driver to drive the lorry without having valid driving licence. The subsequent renewal cannot ratify the earlier violation of policy conditions. In these circumstances, it would be appropriate to direct the Insurance Company to pay the compensation to the claimant and thereafter recover the same from the owner of the lorry, in accordance with law.

9.With regard to the quantum of compensation, even though P.W.2-Doctor issued Ex.P13-Disability Certificate assessing the disability of the first respondent / claimant at 26%, the Tribunal has reduced the same to 15% on the basis of Ex.P4-Wound Certificate issued by Ganga Hospital, Coimbatore and awarded a sum of Rs.45,000/- towards partial permanent disability at the rate of Rs.3,000/- per percentage of disability. The Tribunal has also awarded Rs.2,000/- towards extra nourishment, Rs.5,000/- towards pain, suffering and shock, Rs.7,250/- towards medical expenses on the basis of Ex.P7-Medical Bills and Rs.12,000/- towards transport expenses. The Tribunal has correctly analysed the materials and evidence and has awarded the above reasonable amounts and hence the same does not require any interference.

10.In the result, while confirming the quantum of compensation awarded by the Tribunal, this Court deems it fit to direct the appellant Insurance Company to pay the compensation to the first respondent / claimant and thereafter recover the same from the owner of the vehicle, the second respondent herein, in accordance with law.

11.The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

12.The appellant Insurance Company is directed to deposit the compensation amount with interest, as ordered by the

Tribunal, 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 being made, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//
Sub Assistant Registrar

KM

To

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

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

+1cc to Mr.A.Dhiraviyanathan , Advocate SR.No. 89930

C.M.A.No.1267 of 2018
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sr
A.SK(10/03/2020)