IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.115 of 2014 and
M.P.No.1 of 2014

ICICI Lombard General Insurance Co. Ltd.
No.84/85, Arihand Plaza, Waltax Road,
Chennai-3. ... Appellant /2nd Respondent

Vs.

1. Panneerselvam ... 1st Respondent/Claimants
2. R.S.Jeevarathinam ... 2nd Respondent/1st Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 18.11.2011 passed in M.C.O.P.No.843 of 2009 by the Motor Vehicle Accidents Claims Tribunal/Fast Track Court No.2, Poonamallee.

For Appellant : Ms. R.Sreevidhya
For Respondents : Mr.C.Prabakaran (for R1)
: No appearance for R2

J U D G M E N T

The ICICI Lombard General Insurance Company Limited, Chennai, who is the 2nd respondent in MCOP No.843/2009 on the file of the Motor Accident Claims Tribunal/ Fast Track Court No.II, Poonamallee has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

2. The first respondent/claimant filed the above claim petition seeking compensation of Rs.4,63,000/- for the injuries sustained by him in a road accident that took place on 28.07.2009, when he was riding his motorcycle bearing registration No.TN-Q-5109 along Anna Nagar 6th Avenue, 6th Main road Junction. According to the claimant, a speeding car bearing registration No.TN-05-W-0919, hit the two wheeler, as a result of which, he fell down and sustained multiple injuries. His further contention is that the rash and negligent driving of the driver of the car was the cause of accident and that since the owner of the car, the 2nd respondent herein insured his vehicle with the appellant, Insurance company, both of them are jointly and severally liable to pay compensation to him.

3. The owner of the car remained absent before the Tribunal and therefore, he was set exparte. The insurance company contested the claim petition.

4. After analysing the evidence on record, the Tribunal had held that the driver of the car alone was responsible for the accident and therefore, directed the owner of the car as well as the insurance company to pay a sum of Rs.2,28,524/- jointly and severally to the claimant together with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit. Aggrieved over the same, the insurance company has filed the present appeal.

5. Mr.K.S.Narasimhan, learned counsel appearing for the appellant contended that the Tribunal without considering the final report (Ex.R1) and the rough sketch (Ex.R2) filed by the police, had come to a conclusion that the driver of the car alone was responsible for the accident. His specific contention is that the accident took place also due to the contributory negligence on the part of the claimant.

6. Mr.C.Prabakaran, learned counsel appearing for the first respondent/claimant contended that the criminal court records would not bind the Tribunal and the Tribunal had independently, after analysing the evidence adduced on both sides, had rightly concluded that the driver of the car alone was responsible for the accident.

7. It is pertinent to point out that Mr.Abdul Pari, who was the then Sub Inspector, Transport Investigation Department was examined as RW1 and he filed a final report (Ex.R1) along with a rough Sketch(Ex.R2). He had clearly deposed that the investigation revealed that the claimant drove his two wheeler rashly and negligently and hit the car and therefore, the claimant was shown as an accused in the final report filed by him.

8. However, the Tribunal had concluded that the driver of the car alone was responsible for the accident. His another observation is that the police is carried away by the contents of the complaint lodged by the driver of the car. Though the criminal court records cannot be the sole determining factor for deciding the negligence in motor accident claims, the same cannot be thrown out in entirety. In the instant case, the car came in the opposite direction of the motorcycle and there was a head on collusion. In such circumstances, the entire responsibility cannot be fixed either on the driver of the car or on the rider of the motorcycle. The manner in which the accident took place clearly goes to show that the claimant had also contributed to the accident and therefore, 10% should be deducted towards contributory negligence on the part of the rider of the two wheeler (claimant).

9. As far as the quantum of award passed by the Tribunal is concerned, no arguments were advanced either by the counsel for the appellant or by the counsel for the claimant. A perusal of the award passed by the Tribunal shows that all the relevant factors are taken into account and a just compensation was awarded. Therefore, the quantum of compensation passed by the Tribunal is upheld. After deducting 10% from the compensation amount , the plaintiff is entitled to get Rs.2,05,672/- (2,28,000-22,852).

10. In the result,

(i) The appeal is partly allowed. No costs. The connected miscellaneous petition is closed.

(ii) The compensation awarded by the Tribunal is scaled down from Rs.2,28,524/- to Rs.2,05,672/-.

(iii) The appellant/insurance company is directed to deposit the revised compensation amount of Rs.2,05,672/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit (less the amount if any already deposited by them) within 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the appellant, the claimant/1st respondent is entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar (Admin II)

//True Copy//

Sub Assistant Registrar

mst

To

1. Motor Vehicle Accidents Claims Tribunal,
Fast Track Court No.II,
Poonamallee.

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

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 77819
+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 77309

CMA.No.115 of 2014

VBA(CO)
GN(20/02/2020)