

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2018

Delivered on : 14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1350 of 2017

and

C.M.P.No.7127 of 2017

United India Insurance Company Ltd.,  
No.134, Greams Road,  
Chennai-600 017.

.. Appellant/2<sup>nd</sup> Respondent

Vs.

1.Manoharlal

2.B.Shantilal

.. Respondents /Petitioner &  
1<sup>st</sup> Respondent

(2<sup>nd</sup> Respondent herein was called absent and  
made Ex-parte in Lower Court)

Civil Miscellaneous Appeal filed under Section 173 of M.V.  
Act, 1988, against the Decree and the Judgment dated 08.12.2016  
passed in M.C.O.P.No.2287 of 2010 on the file of the Motor  
Accidents Claims Tribunal, (Special Sub-Judge, Court of Small  
Causes), Chennai full Additional Incharge Special Subordinate  
Judge-II, Small Causes Court, Chennai.

For Appellant : Mr.G.Udayasankar

For Respondents : Mr.K.Varadha Kamaraj (for R1)

R2 - Ex-parte

#### JUDGMENT

This Civil Miscellaneous Appeal has been filed against the  
judgment and decree dated 08.12.2016 made in M.A.C.T.O.P.NO.2287  
of 2010 on the file of Motor Accident Claims Tribunal, in the  
Court of Small Causes, Chennai.

2.The Appellant -Insurance Company is the second Respondent, 1<sup>st</sup> Respondent is Claimant/Petitioner and 2<sup>nd</sup> Respondent is the 1<sup>st</sup> Respondent in M.A.C.T.O.P.NO.2287 of 2010, on the file of Motor Accident Claims Tribunal, in the Court of Small Causes, Chennai. According to the 1<sup>st</sup> Respondent while he was travelling as Pillion rider in Motor Cycle bearing Registration No.TN.07-T-5051 on 06.12.2009 at about 13.30. Hours near KMC Hospital at Poonamallee High Road, the 2<sup>nd</sup> Respondent riding the Motor Cycle bearing Reg.No.TN.07.T.5051 rash and negligent manner to avoid hit the Cyclist one who crossed the Road suddenly turned right side of the road as such hit the median of Poonamallee High Road, due to which the petitioner thrown away from Motor Cycle bearing Registration No.TN-07-T-5051 he suffered multiple grievous injuries. The 1<sup>st</sup> Respondent was 54 years at the time of accident and Proprietor of Rajasthan Rothi Ghar at Triplicane High Road, Chennai-05 and earning Rs.1,50,000/- per month. He claim a sum of Rs.6,00,000/- as compensation. The 2<sup>nd</sup> Respondent is owner of the vehicle remained exparte.

3.The Appellant filed counter statement and denied various allegations made by the 1<sup>st</sup> Respondent and pleaded the accident not happened due to rash and negligent driving of the 2<sup>nd</sup> respondent rider and denied involvement of Vehicle since there is 56 days delay in FIR and denied the age and income of the deceased and denied the injuries of 1<sup>st</sup> Respondent.

4.Before the Tribunal, the second respondent examined as PW1 and one Doctor K.J.Mathizhagan examined as PW2 and marked 14 Documents as Exs.P1 to P14. On behalf of Appellant one Elango Administrative Records in charge examined as RW1 and Police witness examined as RW2 and one document marked.

5.The tribunal considering the pleadings, oral and documentary evidence and accepting the evidence of PW1 and PW2 came to the conclusion that the accident occurred only due to rash and negligent driving of the rider of the 2<sup>nd</sup> Respondent and Vehicle was insured with the appellant and reject the contention of appellant /insurance company deny the involvement of vehicle since there is 56 days delay in FIR on the basis of Documentary Evidence Ex.P2 (Discharge summary) the same prove while travelling as pillion rider in 2<sup>nd</sup> Respondent vehicle he sustained injury and as per the same he immediately admitted after the accident, hence the appellant and 2<sup>nd</sup> Respondent are

liable to pay Compensation. The tribunal fixed the age of the 1<sup>st</sup> Respondent as 54 years on the basis of available Records and the tribunal fixed the income of the 1<sup>st</sup> Respondent as Rs.6500/- per month since the 1<sup>st</sup> respondent /claimant not filed any solid proof prove the income of the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent /Claimant sustained fracture in Right leg and surgery was done took treatment in Padmini Nursing Home, Chetpet, Chennai and inpatient from 4.12.2009 to 6.12.2009 and to prove the injuries sustained by 1<sup>st</sup> Respondent/Claimant one Doctor was examined and he assessed Disability 35% and the same reduced by 30% by tribunal and awarded total compensation of Rs.2,95,000/- with 7.5% interest as under:

Award by Tribunal

| Sl.No. | Particulars                 | Amount        |
|--------|-----------------------------|---------------|
| 1.     | Compensation for Disability |               |
|        | 30% X 3000 =                | Rs.90,000/-   |
| 2.     | Pain and Suffering          | Rs.25,000/-   |
| 3.     | Loss of income              | Rs.19,500/-   |
| 4.     | Transport                   | Rs. 3,000/-   |
| 5.     | Extra-Nourishment           | Rs.20,000/-   |
| 6.     | Damage to Clothes           | Rs. 3,000/-   |
| 7.     | Medical Expenses            | Rs.84,500/-   |
| 8.     | Future Medical Expenses     | Rs.50,000/-   |
|        | TOTAL                       | Rs.2,95,000/- |

6.Against the said award dated 08.12.2016 made in M.A.C.T.O.P.No.2287 of 2010, the present Civil Miscellaneous appeal prepared by the appellant.

7.The learned counsel for the appellant contended that the accident not happened due to rash and negligent driving of the 2<sup>nd</sup> respondent rider and denied involvement of Vehicle since there is 56 days delay in FIR and FIR closed as Undetectable and denied the age and income of the 1<sup>st</sup> Respondent and denied the injuries of 1<sup>st</sup> Respondent. The learned counsel for appellant further contended that disability 30% fixed by the tribunal is

high and contented that the award of tribunal various heads very high.

8. The learned counsel for the 1<sup>st</sup> respondent submitted that the evidence of PW1 clearly shows the accident occurred only due to rash and negligent driving of the rider of the 2<sup>nd</sup> respondent and Vehicle was insured with the appellant and Documentary Evidence Ex.P2 (Discharge summary) the same proved while travelling as pillion rider in 2<sup>nd</sup> Respondent vehicle he sustained injury and as per the same he immediately admitted after the accident and it shows while travelling as pillion rider in the 2<sup>nd</sup> respondent vehicle he sustained injuries since 1<sup>st</sup> Respondent M/C hit median of the Road, hence the appellant and 2<sup>nd</sup> Respondent are liable to pay Compensation and reject the contention of appellant /insurance company about the denial of the involvement of vehicle since there is 56 days delay in FIR. The learned counsel for the 1<sup>st</sup> Respondent contended that when 2<sup>nd</sup> Respondent exparte its shows the 2<sup>nd</sup> respondent vehicle involved in the accident. On the basis of Documentary Evidence Ex.P2 (Discharge summary) the same prove while travelling as pillion rider in 2<sup>nd</sup> Respondent vehicle he sustained injury and as per the same he immediately admitted in the hospital, hence the appellant and the 2<sup>nd</sup> Respondent are liable to pay Compensation. The tribunal rightly awarded total compensation of Rs.2,95,000/- with 7.5% interest considering the above all heads. The tribunal considered all the materials is proper perspective and awarded proper compensation and prayed for dismissal of the above Civil Miscellaneous Appeal.

9. Heard the learned counsel for the appellant as well as the 1<sup>st</sup> Respondent and perused the materials available on record.

10. As far as negligence concern, I find this accident happened due to the rash and negligent driving of the 2<sup>nd</sup> respondent vehicle because 1<sup>st</sup> Respondent (PW1) is best person to speak the accident he clearly says the accident happened rash and negligent driving of 1<sup>st</sup> Respondent Vehicle and the same corroborated by FIR and Discharge summary and regards the same no contra evidence of appellant. As far as 56 days Delay in FIR concern the reason for delay is acceptable because the 1<sup>st</sup> Respondent /claimant took nearly one month treatment in the hospital and since he incurred medical expenses nearly Rs.85,000/- and the 2<sup>nd</sup> Respondent who is the friend of the claimant has given the complaint and registered F.I.R. as delay one. Hence, I find the 2<sup>nd</sup> Respondent vehicle involved in the accident and reject contention of appellant in this regard and I

am not interfere with the award passed by the Tribunal finding in this regard.

11.I find the tribunal awarded various claims under all heads is correct and reasonable considering the 1<sup>st</sup> Respondent/Claimant grievous injuries, treatment period and Doctor Evidence, hence, I am not interfere with tribunal awards all heads regards quantum of compensation. I find no merits in this appeal. The award dated 08.12.2016 made in M.A.C.T.O.P.NO.2287 of 2010 on the file of Motor Accident Claims Tribunal, in the Court of Small Causes, Chennai, is confirmed.

12.In the result, the above Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The learned counsel for the appellant is directed to deposit the award amount along with interest, if not already deposited, within six weeks from the date of receipt of a copy of this order. On such deposit, the 1<sup>st</sup> Respondent permitted to withdraw his above said award amount along with interest, after adjusting the amount already withdrawn if any.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1.TheMotor Accidents Claims Tribunal,  
(Special Sub-Judge, Court of Small Causes), Chennai.

2.The Section Officer,

V.R.Section, High Court, Madras.

+1 cc to Mr.G.Udayasankar, Advocate, Sr.No. 23895

+1 cc to Mr.K.Varadha Kamaraj, Advocate, Sr.No. 23909

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Judgment made in  
C.M.A.No.1350 of 2017  
and C.M.P.No.7127 of 2017

NMI (CO)

CSL/10.06.2019