IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.181 of 2017
and C.M.P.No.1238 of 2017

The Branch Manager,
M/s.United India Insurance Co.Ltd.
Vellore. .. Appellant/Second Respondent

Vs

1.Rathinavelu ..First Respondent/Petitioner

2.M.Nizar ..Second Respondent/First Respondent

Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 08.03.2012 made in MACTOP No.302 of 2010 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Tirupathur.

For Appellant : Ms.R.Rathna Thara

For Respondents : No appearance for R1
Mr.Pa.Suresh Kumar for R2

JUDGMENT

The case in brief, is as follows:

On 06.10.2007 at about 05.45 a.m., the first respondent was riding the motorcycle bearing Reg.No.TN-23-W-5243 along the extreme left side of the Main Road near Tirupattur Bus Stand. When he reached near Modern Lodge, the Minidor Auto bearing Reg.No.TN-23-AW-7625 belonging to the second respondent herein and insured with the appellant Insurance Company, driven by its driver in a rash and negligent manner, came towards Dhandapani Koil Street and dashed against the first respondent. Due to the said impact, the first respondent sustained grievous injuries and a fracture. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal fixed the contributory negligence at 80% on the part of the driver of the Minidor Auto and 20% on the part of the claimant and awarded a total compensation of Rs.1,40,162/- with interest at the rate of 7.5% per annum from the date of petition, and directed the appellant Insurance Company to pay 80% (Rs.1,12,130/-) out of the said sum to the claimant. The Insurance Company has also permitted the appellant Insurance Company to recover the compensation amount from the owner of the Minidor Auto, on the ground of violation of policy conditions.

2.Challenging the same, the appellant Insurance Company has come up with the present appeal.

3.The learned counsel for the appellant Insurance Company, while not disputing the quantum of compensation awarded by the Tribunal, specifically submitted that the Tribunal has erred in fixing 80% contributory negligence on the driver of the Minidor Auto, when the fact remained that the claimant was not having a valid driving licence at the relevant point of time. She submitted that the Tribunal ought to have fixed the entire liability on the owner of the Minidor Auto for his wilful default and fundamental breach in his statutory duty to ensure the possession of valid driving licence by the driver.

4.The learned counsel for the first respondent / claimant has submitted that the Tribunal has correctly considered the materials and evidence available on record and has awarded the compensation which is just, fair and reasonable. He also submitted that the Tribunal has correctly ordered the appellant Insurance Company to pay the amount to the claimant and to recover the same from the owner of the vehicle, on the ground of violation of policy conditions and hence the compensation awarded by the Tribunal does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials and evidence available on record carefully and meticulously.



6.It was put forth on behalf of the Insurance Company before the Tribunal that the driver of the Minidor Auto was not possessing the valid driving licence at the time of accident and further the said vehicle was used for taking passengers for hire, in breach of policy and permit conditions. The first respondent / claimant has been examined as P.W.1 before the Tribunal. He admitted before the Tribunal during the cross-examination that he was not possessing the driving licence at the time of accident. He also deposed before the Tribunal that the accident took place only when he turned to the right side of the road, suddenly. In the circumstances, the Tribunal fixed the contributory negligence at 80% on the part of the driver of the Minidor Auto and 20% on the part of the first respondent / claimant. This Court is of the considered view that fixing contributory negligence at 60% on the part of the driver of the Minidor Auto and 40% on the part of the first respondent / claimant would meet the ends of justice. Accordingly, this Court fixes the contributory negligence at 60% on the part of the driver of the Minidor Auto and 40% on the part of the first respondent / claimant. In view of the same, the first respondent is entitled to the modified compensation of Rs.84,097/- (60% of Rs.1,40,162/-) with interest at the rate of 7.5% per annum from the date of petition.

7.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

8.The appellant Insurance Company is directed to deposit the modified compensation as ordered above, 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. Thereafter, the Insurance Company can recover the compensation from the owner of the Minidor Auto, the second respondent herein, without filing any petition, as ordered by the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

KM

To

1.The Additional District Judge,
The Motor Accidents Claims Tribunal,
Fast Track Court,
Tirupathur, Vellore District.

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

+1cc to Mr.Ms.R.Rathna Thara, Advocate SR.No.83295

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PD(CO)
GMY(15/06/2020)