

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4743 of 2019

and

C.M.P.No.27118 of 2019

United India Insurance Co. Ltd.,
New No.768, Old No.1028,
United India Buildings,
Avanashi Road,
Near Dinathanthi Office,
Coimbatore - 641 008. Appellant/2nd Respondent

Vs.

1.K.S.Kanna1st Respondent/Petitioner
2.S.Abdul Gafoor2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.02.2019 made in M.C.O.P.No.1273 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court, Coimbatore.

For Appellant : Mr.A.Dhiraviyanathan

For Respondents : Ms.Girija Velmurugan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 20.02.2019 made in M.C.O.P.No.1273 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court, Coimbatore.

2. The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.1273 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court, Coimbatore. The 1st respondent filed

the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.05.2016.

3. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 2nd respondent and directed the appellant/Insurance Company to pay a sum of Rs.8,92,621/- as compensation to the 1st respondent.

4. Challenging the said award dated 20.02.2019 made in M.C.O.P.No.1273 of 2016, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

5. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in relying on FIR which was marked through the first respondent. When the author of complaint was not examined, the Tribunal failed to consider the averments in the counter statement filed by the appellant. In the absence of any material evidence, the Tribunal erred in fixing monthly income of the first respondent as Rs.25,000/-. The Tribunal erroneously considered Ex.P12 / copy of relieving order, Ex.P13 / copy of service certificate and fixed monthly income at Rs.25,000/-. The amount awarded by the Tribunal towards loss of earning capacity is excessive and prayed for setting aside the award of the Tribunal.

6. Ms.Girija Velmurugan, takes notice for the first respondent and contended that the first respondent proved that the accident has occurred only due to the rash and negligent riding by the rider of the two wheeler / second respondent by examining himself as PW1 and marking FIR, which was registered against the second respondent / rider of the vehicle. The first respondent was examined by the Medical Board and the Board assessed that the first respondent had suffered 18% disability. The first respondent was working as a Senior Manager (Production) for M/s. ABT Industries Ltd, Pollachi and was earning a sum of Rs.64,000/- per month. The Tribunal erroneously fixed the monthly income of the first respondent at Rs.25,000/-. Due to the injuries, the first respondent lost his job and he could not continue his job as he was doing earlier. The Tribunal considering the nature of work and disability suffered by the first respondent has rightly awarded compensation by adopting multiplier method and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant/Insurance Company as well as learned counsel appearing for the first respondent and perused all the materials available on record.

8. From the materials available on record, it is seen that the first respondent has contended that while he stopped his vehicle to have tender coconut, the second respondent drove the vehicle in a rash and negligent manner and dashed on the back side of the motorcycle of the first respondent and caused the accident. To prove the said contention, the first respondent examined himself as PW1 and marked FIR and charge sheet which were registered against the second respondent. On the other hand, it is the case of the appellant in the charge sheet that the first respondent suddenly stopped the motorcycle and turned to the right side without any indicator and invited the accident. The appellant has not examined either the second respondent / rider of the offending motorcycle or any eyewitness to prove their contention. In the absence of any contra evidence, the Tribunal held that the accident has occurred only due to rash and negligent riding by the rider of the two wheeler / second respondent. There is no error in the said finding warranting interference by this Court.

9. As far as quantum of compensation is concerned, the first respondent has contended that he was working as a Senior Manager (Production) for M/s. ABT Industries Ltd, Pollachi and was earning a sum of Rs.64,000/- per month. The first respondent has not produced salary certificate, but has only produced Ex.P12/copy of relieving order and Ex.P13/copy of service certificate. The Tribunal considering these two documents held that the first respondent was working as a Senior Manager (Production) for M/s. ABT Industries Ltd, Pollachi and has fixed notional income of the first respondent at Rs.25,000/- per month. The accident is of the year 2016. Due to the injuries sustained by him, the appellant could not continue his job as he was doing earlier. In view of the same, the Tribunal applied multiplier method and awarded compensation towards loss of earning capacity. The compensation awarded by the Tribunal towards loss of earning capacity is not excessive. The main contention of the appellant is that the Tribunal fixed monthly income of the first respondent at Rs.25,000/- without any basis and the same is excessive. The Tribunal has given reason for fixing monthly income of the first respondent. Taking into consideration Ex.P12 and Ex.P13. The first respondent took treatment at PSG Hospital, Coimbatore as in-patient from 01.05.2016 to 19.05.2016 and subsequently from 20.05.2016 to 25.05.2016. The Tribunal has not awarded any amounts towards

loss of amenities and attendant charges. In such circumstances, the amounts awarded by the Tribunal under all other heads are not excessive warranting interference by this Court.

10. In the result, this Civil Miscellaneous Appeal is dismissed and the amount of Rs.8,92,621/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1273 of 2016. On such deposit, the 1st respondent/ 1st claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Coimbatore.

+1cc to Mr.M.Velmurguan, Advocate SR.104672

+1cc to Mr.A.Diraviyanathan, Advocate SR.105010

C.M.A.No.4743 of 2019

and

C.M.P.No.27118 of 2019

LN(CO)

CB(05/02/2020)

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