

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 17.09.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2674 of 2017
and C.M.P.No.14862 of 2017

United India Insurance Co.Ltd.
104-A, Peramanur Main Road
Salem-7.

... Appellant/2nd respondent

Vs

1.S.Senthilkumar ...1st respondent/ Petitioner

2.S.Karunakaran ...2nd respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 05.06.2017 made in MCOP No.692 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2) at Salem.

For Appellant : Ms.I.Malar

For Respondents : Mr.S.P.Yuaraj for R1
No appearance for R2

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.1,96,066/- towards compensation to the first respondent, due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On 09.01.2013, the first respondent was riding his motorcycle bearing Reg.No.TN-30-X-7763 on the extreme left side of the Tharamangalam - Salem Main Road. At about 09.00 hours, when he was proceeding near Krishnanpudur Bus Stop, another motorcycle bearing Reg.No.TN-30-AV-2489 belonging to the second respondent and insured with the appellant Insurance Company, came from the same direction in a rash and negligent manner and hit on the back side of the motorcycle which the first respondent was riding. 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.6,00,000/- as total compensation. On consideration of the materials and evidence available on record,

the Tribunal awarded a total compensation of Rs.1,96,066/- with interest at the rate of 7.5% per annum from the date of petition. The Tribunal directed the Insurance Company to pay the compensation to the claimant and thereafter recover the same from the owner of the vehicle, ie., the second respondent herein.

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 giving a finding that the accident had occurred only due to the rash and negligent driving of the driver of the two-wheeler bearing Reg.No.TN-30-AV-2489 belonging to the second respondent, since there is contributory negligence on the part of the first respondent. Even though the learned counsel has not disputed the quantum of compensation awarded by the Tribunal, she submitted that the Tribunal has erred in ordering pay and recovery and it ought to have directed the owner of the vehicle (second respondent) alone to pay the compensation to the claimant.

5.The learned counsel for the first respondent / claimant has submitted that the Tribunal has rightly considered the materials and evidence available on record and had rendered a finding that the accident had occurred only due to the rash and negligent driving of the driver of the two-wheeler bearing Reg.No.TN-30-AV-2489 belonging to the second respondent. It is also his submission that the compensation amounts awarded by the Tribunal is just, fair and reasonable and the Tribunal has correctly ordered pay and recovery.

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.Since the quantum of compensation is not disputed, this Court is not inclined to interfere with the same.

8.The first respondent has been examined as P.W.1 before the Tribunal. A case in Crime No.30 of 2013 has been filed against the driver of the two-wheeler bearing Reg.No.TN-30-AV-2489 before the Tharamangalam Police Station, Salem District, with regard to the accident. P.W.1 deposed before the Tribunal about the nature of accident. He filed a copy of Ex.P1-First Information Report which reiterates the contentions made in the case in Crime No.30 of 2013 that the accident had occurred only due to the rash and negligent driving of the driver of the two-wheeler bearing Reg.No.TN-30-AV-2489 belonging to the second respondent. Ex.P3 is the Discharge Summary issued to the first respondent by Ganga Hospital, Coimbatore. Ex.P4 is the Discharge Summary issued to the first respondent by Salem Neuro Hospital. From Exs.P3 and P4, it is clear that the first respondent took

treatment in the said hospitals, subsequent to the accident. But the appellant Insurance Company has not adduced any oral or documentary evidence before the Tribunal either to disprove the contentions put forth on the side of the claimant or to substantiate their claim, with regard to the accident. In these circumstances, the Tribunal has fixed the negligence on the part of the driver of the two-wheeler bearing Reg.No.TN-30-AV-2489. Further, while accepting the contention of the appellant Insurance Company that the driver of the two-wheeler bearing Reg.No.TN-30-AV-2489 was not having the valid driving licence at the time of accident, the Tribunal has ordered the appellant Insurance Company to pay the compensation and thereafter recover the same from the owner of the two-wheeler bearing Reg.No.TN-30-AV-2489. Having given a finding that the accident had occurred only due to the rash and negligent driving of the driver two-wheeler bearing Reg.No.TN-30-AV-2489, the Tribunal has directed the appellant Insurance Company, being the insured for the said two-wheeler, to pay the compensation and since there was violation of policy conditions, the Tribunal permitted the Insurance Company to recover the compensation from the owner of the vehicle. The Tribunal has correctly considered the materials and evidence and fixed the negligence on the part of the driver of the two-wheeler bearing Reg. No.TN-30-AV-2489 and has correctly ordered for pay and recovery.

9.In view of the above stated circumstances, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award 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, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar(AD II)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Sub Judge, Motor Accidents Claims Tribunal
(Special Sub Court No.2) at Salem.

Copy to: The Section Officer, VR Section, High Court, Madras.
+lcc to M/s.I.Malar , Advocate SR.No.80662
+lcc to Mr.S.P.Yuaraj , Advocate SR.No. 80271

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A.SK(18/02/2020)