IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.573 of 2017
and
C.M.P.No.3408 of 2017

The Branch Manager,
The United India Insurance Co. Ltd.,
Branch Office,
Salem - District. ... Appellant /Respondent II

Vs.

1. Mabu Basha ...Ist Respondent/Petitioner
2. Monoj Kumar
(R2 was set exparte before the Tribunal)
... 2nd Respondent/Respondent I

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.02.2016 in M.C.O.P.No.1085 of 2014 on the file of the Motor Accidents Claims Tribunal (Special Sub - Judge), Dharmapuri District.

For Appellant : Mr.J.Chandran

For R1 : Mr.S.Sathiaseelan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award of a sum of Rs.2,23,000/- 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 the fateful day, i.e., on 24.11.2012 about 8.00pm, the first respondent/claimant was riding his Boxer Motorcycle bearing Registration No.TN-29-AV-4974. When he was proceeding near Vadasandhaiyur, an auto bearing Registration No.TN 30-AJ-1845 belonging to the second respondent herein and insured with the appellant insurance company, came in a rash and negligent manner and dashed against the motorcycle. Due to the said impact, the first respondent sustained grievous injuries all over the body. He filed a claim petition claiming compensation of Rs.5,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,23,000/- with interest at the rate of 7.5% per annum from the date of petition. Aggrieved over the same, the appellant insurance company has filed this appeal.

3. The learned counsel for the appellant Insurance Company submitted that the driver of the auto did not possess a valid driving licence and he was not having badge at the time of the accident and hence, he was not covered by any risk, pursuant to the insurance of the vehicle, on the date of the accident. However, the Tribunal has erred in fixing the liability on the appellant insurance company. He also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4. The learned counsel for the first respondent/claimant submitted that the Tribunal after evaluating the oral and documentary evidence, has rightly fastened the liability on the appellant insurance company and awarded the just compensation and hence, the same do not call for any interference by this Court.

5. Heard the learned Counsel for the appellant and the learned counsel for the first respondent/claimant and perused the materials available on record carefully and meticulously.

6.The claimant examined himself as P.W.1, according to whom, the accident was caused due to the rash and negligent act on the part of the driver of the auto. The testimony of P.W.1 was corroborated by Ex.P1-First Information Report, which was registered against the driver of the auto stating that he was responsible for the accident. Placing reliance on those oral and documentary evidence, the Tribunal has rightly come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the auto and the same need not be interfered with by this Court.

7.The next aspect to be considered herein is the liability of the appellant to pay compensation. Before the Tribunal, the appellant insurance company examined R.W.1 and R.W.2 and marked Exs.R1 to R6 documents, as per which, the offending vehicle was insured with the appellant and the permit was granted by the Regional Transport Officer only to ply the vehicle within the Salem Municipality, whereas the accident had occurred at Vadasandhaiyur, Pappireddipatty, Dharmapuri District and hence, there was violation of policy condition. The Tribunal, taking note of the said oral and documentary evidence, has arrived at the conclusion that the driver of the auto did not possess the valid driving licence and permit at the time of accident, which was in violation of the policy condition and rightly fastened the liability on the appellant insurance company to pay compensation to the first respondent/ claimant/injured, with a right to recover the same from the second respondent (owner of the auto), which finding this Court is not inclined to interfere.

8.With regard to the quantum of compensation, P.W.1/ respondent/claimant stated in his claim petition that he was aged about 42 years and was earning Rs.10,000/- as a coolie. P.W.2/doctor deposed that he examined the respondent/claimant on 20.04.2015 and assessed his permanent disability at 35% and issued Ex.P8 permanent disability certificate. As per Ex.P9-X-ray, the respondent/claimant sustained fracture on right hand. Ex.P7 discharge summary disclosed that the claimant was admitted as in-patient and took treatment from 30.12.2013 to 04.01.2014 at Kuringe Hospital, Salem. Having regard to those oral and documentary evidence, the Tribunal has awarded a total compensation of Rs.2,23,000/- i.e., Rs.1,05,000/- for permanent disability, Rs.25,000/- for pain and suffering, Rs.48,000/- for medical expenses as per Ex.P5 medical bill, Rs.5,000/- for transportation, Rs.10,000/- for extra nourishment and damage to personal belongings, Rs.25,000/- for mental agony and loss of comfort and Rs.5,000/- for attendant charges, which, this Court is of the opinion, are fair, just and reasonable and the same cannot be treated as excessive or exorbitant, at any stretch of imagination and hence, the same are hereby confirmed.

9.In the result, all 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 and costs, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgement and thereafter, recover the same from the owner of the vehicle, in accordance with law. On such deposit, the Tribunal shall transfer the amount lying in the deposit to the bank account of the first respondent/claimant through RTGS within a period of one week thereafter.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
The learned Special Sub - Judge,
Dharmapuri District.

Copy to

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

+1cc to Mr.S.Sathiaseelan, Advocate Sr.77099
+1cc to Mr.J.Chandran, Advocate Sr.76830

C.M.A.No.573 of 2017
and
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BS(CO)
srg 05/02/2020