IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.2841 OF 2018
AND
C.M.P.NO.21644 OF 2018

United India Insurance Co. Ltd.,
Branch Office, No.17, G.P.M.Street,
Ambapuram, Gudiyattam,
Vellore ... Appellant/2nd Respondent

vs.

1.C.Krishnan ...1st Respondent/Petitioner
2.Chandran ...2nd Respondent/1st Respondent

Prayer:
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 21.03.2018 made in MCOP.No.21 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Krishnagiri.

For Appellant : Mr.S.Arun Kumar

For Respondent 1 : Mr.V.Kumaravelan

JUDGMENT
[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the insurance company challenging the award dated 21.03.2018 passed by the Motor Accident Claims Tribunal, Special Sub Judge, Krishnagiri in MCOP.No.21 of 2017.

Brief facts leading to the filing of the instant appeal:

2. The first respondent sustained injuries as a result of an accident caused by a Tractor bearing registration No.TN25-AE-5346 owned by the second respondent and insured with the Appellant. The accident happened while the first respondent was riding his Hero Honda Splendor motor cycle bearing registration No. TN24-S-1701 in Neridamanapalli – Bargur Sipcot Road, when

the insured vehicle (Tractor) bearing registration No.TN25-AE-5346 dashed against the two wheeler driven by the first respondent causing grievous injuries to him.

3. The first respondent preferred a claim before the Motor Accident Claims Tribunal, Special Sub Judge, Krishnagiri in MCOP.No.21 of 2017 against the second respondent as well as the Appellant insurance company seeking a compensation of Rs.80,54,200/- which was restricted by the claimants to Rs.35,00,000/- for the injuries sustained by him as a result of an accident caused by the insured vehicle (Tractor).

4. By an award dated 21.03.2018 passed in MCOP.No.21 of 2017, the Motor Accident Claims Tribunal directed the Appellant to pay the first respondent a sum of Rs.18,37,000/- as compensation together with interest at the rate of 9 % per annum from the date of claim till the date of realisation and also permitted the Appellant to recover the same from the second respondent.

5. Aggrieved by the award dated 21.03.2018 passed in MCOP.No.21 of 2017, this appeal has been filed by the insurance company.

6. Heard Mr.S.Arun Kumar, learned counsel appearing for the Appellant and Mr.V.Kumaravelan, learned counsel appearing for the first respondent. Despite service of notice on the second respondent, he did not enter appearance either by himself or through counsel.

Discussion:

7. According to the Appellant/Insurance Company, they are not liable to pay compensation as the second respondent has not produced the driving licence even at the time of vehicle inspection and therefore adverse inference can be drawn that the policy conditions were violated by him. It is also the case of the Appellant that they must be absolved of the liability to pay compensation in view of the oral evidence of RW1 & RW2 as well as the documentary evidence Ex.R1 to Ex.R6.

8. The Appellant has also challenged the quantum of compensation assessed by the Tribunal. According to them, the disability certificate issued by the medical board for the first respondent is an exaggerated assessment. According to them, the assessment of 50% disability by the medical board is an incorrect assessment. It is also the case of the Appellant that the Tribunal has without any proof for the avocation and the income of the first respondent/claimant, erred in awarding Rs.11,34,000/- as loss of earning power and has also erroneously granted 40% towards loss of future prospects to the first

respondent/claimant. Further, it is also the case of the Appellant that the Tribunal has erroneously awarded a sum of Rs.5,72,000/- towards medical expenses without sufficient proof and a sum of Rs.50,000/- towards loss of amenities and enjoyment of life.

9. This Court has perused and examined the impugned award as well as the materials and evidence available on record.

10. Before the Tribunal, the first respondent/claimant have filed 12 documents which were marked as Ex.P1 to Ex.P12 and he examined himself as PW1. On the side of the respondents, six documents were produced which were marked as Ex.R1 to Ex.R6 and two witnesses were examined viz., RW1-an employee of RTO, Krishnagiri and RW2-an official of Insurance Company.

11. Ex.P1 - FIR was registered only against the driver of the Tractor (insured vehicle). Ex.P1 corroborates the evidence of the first respondent/claimant (PW1). It is the consistent stand of the first respondent/claimant, as seen from his pleadings as well as his oral evidence that only due to the rash and negligent driving by the driver of the Tractor (insured vehicle), the accident had happened which resulted in him sustaining injuries. Before the Tribunal, the driver of the Tractor (insured vehicle) was not examined as a witness. This being the case, the Tribunal has rightly believed the statement of the first respondent/claimant who is a person, present at the site of the accident. RW1 and RW2 were not eye-witnesses to the accident and therefore, the Tribunal has rightly rejected their evidence. The Tribunal has rightly followed the decision of this Court laid down in the case of Muthu vs. The Managing Director, TNSTC reported in 2014 (1) TNMAC 156 (SC) that the determination of negligence in a motor accident has to be based upon preponderance of probabilities and therefore, need not be proved beyond reasonable doubt as in the case of criminal cases. Since no reliable contra evidence has been produced by the Appellant, the Tribunal has rightly held that only due to the rash and negligent driving by the driver of the Tractor (insured vehicle), the accident had happened which resulted in the injuries sustained by the first respondent/claimant.

12. Ex.P8 (insurance policy) also confirms that the Tractor was insured with the Appellant and the insurance policy is valid on the date of the accident which occurred on 10.01.2016. Since the driving licence of the driver of the Tractor (insured vehicle) was not produced by the owner of the said Tractor, the Tribunal has rightly adopted pay and recovery method while awarding compensation.

13. The first respondent/claimant suffered Type III Open Fracture (segmental) M/3 left tibiamalleolus fracture with personal tendor injury as a result of the accident and he was admitted as in-patient at Hosmot Hospital, Bangalore on five occasions viz., from 10.01.2016 to 29.01.2016, from 17.02.2016 to 20.02.2016, from 01.03.2016 to 07.03.2016, 11.05.2016 to 15.05.2016 and from 13.02.2017 to 16.02.2017. The discharge summaries issued by the hospital were marked as Ex.P2 to Ex.P6 which proves that the first respondent/claimant has suffered grievous injuries due to the accident caused by the driver of the Tractor (insured vehicle).

14. Ex.P10 are the medical bills pertaining to the first respondent/claimant incurred by him for the treatment of his injuries. The medical board has also assessed the injuries sustained by the first respondent/claimant as a result of the accident and assessed the partial permanent disability of the first respondent/claimant at 60%. The medical board disability certificate Ex.C1 is an independent assessment. Despite the availability of the disability certificate issued by the medical board-Ex.C1, the Tribunal has assessed the partial functional disability at 50%. This will clearly indicate that the Tribunal has applied its mind to the nature of the injuries sustained by the first respondent and did not simply accept the medical board certificate Ex.C1. The Tribunal instead by its independent assessment fixed the partial functional disability of the claimant at 50%. We do not find any infirmity in the said finding of the Tribunal.

15. The age of the first respondent/claimant, at the time of the accident was 38 years which has been proved through Ex.P11 Aadhar card of the first respondent/claimant. The first respondent claimed that he was a Mason and was also doing poultry farming and earning a monthly income of Rs.25,000/- during the time of the accident. But he has not filed any proof for his avocation or for his monthly income. Even though the first respondent/claimant had claimed that he was earning a monthly income of Rs.25,000/- at the time of the accident, the Tribunal has assessed the notional monthly income of the first respondent/claimant as Rs.9,000/- at the time of the accident, which in our considered view is a correct assessment.

16. The Tribunal has rightly applied the correct multiplier of 15 as the first respondent/claimant was 38 years at the time of the accident following the judgment of the Hon'ble Supreme Court in the case of Sarla Verma and Others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC).

17. An addition of 40 % towards loss of future prospects by

the Tribunal is also correct as it is in accordance with the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & others reported in 2017 (2) TN MAC 609 (SC).

18. The Tribunal has considered the medical bills and has rightly awarded Rs.5,72,000/- towards reimbursement of medical expenses. The Tribunal has rightly awarded a sum of Rs.30,000/- towards transportation, nutrition and attender charges, a sum of Rs.50,000/- towards pain and suffering, a sum of Rs.50,000/- towards loss of amenities and enjoyment of life and another sum of Rs.1,000/- towards damages to clothing and articles. The compensation awarded under the aforementioned heads are in accordance with the settled principles of law. Therefore, the total compensation of Rs.18,37,000/- awarded by the Tribunal together with interest and cost does not call for any interference.

Conclusion:

19. In the result, there is no merit in this appeal and accordingly, the appeal shall stand dismissed. The Appellant insurance company is directed to deposit the entire award amount as awarded by the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.21 of 2017 within a period of four weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the second respondent. On such deposit being made, the Tribunal is directed to transfer the amount lying to the credit of MCOP.No.21 of 2017 to the first respondent/claimant through RTGS within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   Special Sub Judge, Krishnagiri.
2. The Section Officer,
   VR Section, High Court, Chennai.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.79818

C.M.A.No.2841 of 2018

CP(CO)
CS/05/03/2020