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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2886 of 2018 and
C.M.P.No.21929 of 2018

United India Insurance Company Limited,
No.196, 1st Floor, 2nd Cross Vidya Nagar,
Opp. SKF Co. Hosur Main Road,
Bommasandra Industrial Area,
Hebbagodi, Bangalore - 560 099.

Now address at
United India Insurance Company Limited,
Regional Office No.178, Dr.Nanjappa Road,
Coimbatore - 641 018. .. Appellant/2nd Respondent

Vs.

1.Krishnappa ..1st Respondent/Petitioner

2.Kanagaraju .. 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.08.2018 made in M.C.O.P.No.545 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.C.Paranthaman

For R1 : Mr.I.Siddiq for
M/s.Dass & Viswa Associates

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award dated 21.08.2018 made in M.C.O.P.No.545 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.



2.The appellant is the second respondent in M.C.O.P.No.545 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. The first respondent filed the above 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 21.03.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging the first respondent and directed the appellant-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.4,68,000/- as compensation to the first respondent/claimant.

4.Against the said award dated 21.08.2018 made in M.C.O.P.No.545 of 2017, 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 failed to properly consider the evidence of R.W.1, the employee of the appellant and documents filed by the appellant. The Tribunal failed to see that there was no damage to the lorry and front portion of the two wheeler only damaged. Only the first respondent dashed against the backside of the lorry and caused the accident. In any event, the Tribunal ought to have fixed contributory negligence on the part of the first respondent. The first respondent suffered only 20% disability as certified by the Medical Board and the Tribunal ought to have awarded compensation on percentage basis and erred in applying multiplier method. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal.

6.Per contra, the learned counsel appearing for the first respondent contended that the driver of the lorry drove the same in a rash and negligent manner and dashed against the backside of the motorcycle, due to which the first respondent fell down and sustained injuries and the motorcycle also got damaged. The first respondent examined himself as P.W.1 and proved the manner of the accident. F.I.R. was lodged only against the driver of the lorry. The Tribunal has given reason for fixing negligence on the part of the driver of the lorry and not accepting the report of Ex.R2/Motor Vehicle Inspector's report for the lorry. Due to the fracture, the first respondent could not use his hand



and could not do the work as he was doing earlier. In such circumstances, the Tribunal has applied multiplier method and granted compensation which is not excessive and prayed for dismissal of the appeal.

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7.I have heard the learned counsel appearing for the appellant as well as the first respondent and perused the entire materials on record.

8.From the materials available on record, it is the contention of the first respondent that the driver of the lorry drove the same in a rash and negligent manner and dashed against the motorcycle driven by the first respondent. To prove the said contention, the first respondent examined himself as P.W.1 and marked F.I.R. which was registered against the driver of the lorry. According to the appellant, when the driver of the lorry was turning the lorry after giving signal, the first respondent tried to over take and dashed on the front portion of the lorry and caused the accident. To prove the said contention, the appellant has not examined the driver of the lorry. The appellant relied on only the Motor Vehicle Inspector's report as there is no damage to the lorry and only the two wheeler was damaged in the front side. The Tribunal accepting the contention of the learned counsel for the first respondent that when the lorry dashed on the backside of the motorcycle, the first respondent fell down and motorcycle damaged and Motor Vehicle Inspector's report is not a conclusive proof to fix the negligence. From the award of the Tribunal, it is seen that the Tribunal has properly appreciated the evidence and held that the accident has occurred only due to rash and negligent driving by driver of the lorry. There is no error in the said finding of the Tribunal warranting interference by this Court.

9.As far as quantum of compensation is concerned, the first respondent has suffered fracture in left leg and has taken treatment in the hospital as in-patient from 21.03.2015 to 26.03.2015 and the Medical Board certified that the first respondent suffered 20% partial permanent disability. The Tribunal accepting the certificate of Medical Board and that the first respondent is unable to use his left hand, nature of work done by the first respondent, applied multiplier method and granted compensation for loss of earning power and the same is in order and the amount awarded by the Tribunal under different heads are not excessive warranting interference by this Court.

10.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.4,68,000/- awarded by the Tribunal as compensation to the first respondent, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less



the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.545 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. On such deposit, the first respondent 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.

s/d-
Assistant Registrar(CS VI)

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Sub-Assistant Registrar

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To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

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

+1 CC to M/s. Dass and Viswa Associates sr 30692.
+1 CC to Mr.C.Paranthaman, Advocate sr 30301.

C.M.A.No.2886 of 2018 and
C.M.P.No.21929 of 2018

BS(CO)
SP(17/10/2019)