BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.04.2019
CORAM:
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A(MD)No.295 of 2014
and
M.P(MD) No.1 of 2014

The Oriental Insurance Company Limited,
Rep.by its Branch Manager,
Door No.16, Mela Masi Street,
Madurai Town. : Appellant/2nd Respondent

Vs.

1.Unnamalai
2.Raju Thevar : Respondents

(2nd Respondent remained exparte before the lower court.)

Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the Judgment and Decree dated 29.10.2013 made in M.C.O.P.No.53 of 2011, on the file of the Motor Accidents Claims Tribunal cum Sub Judge, Aruppukottai.

For Appellant : Mr.K.Bhaskaran
For R1 : M/s.Vijayakumari Natarajan
For R2 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree made in M.C.O.P.No.53 of 2011, dated 29.10.2013, on the file of the Motor Accidents Claims Tribunal cum Sub Judge, Aruppukottai.

2.The claim application was filed by the claimant claiming compensation for a sum of Rs.5,00,000/- for the injuries sustained by her. On 31.12.2010, at about 04.30.pm., while she was returning her duty from east to west, the vehicle, viz., tractor bearing registration No.TN-58B-6304, which was driven by the second respondent with rash and negligent manner and hit the claimant, for which she sustained injuries. Immediately, she was taken to hospital and she was treated as an in-patient from 31.12.2010 to 23.02.2011 and the claimant had undergone surgery. At the time of accident, she was working as a Coolie and was earning a sum of Rs.5,000/- per month. Hence, the claimant filed a claim petition in M.C.O.P.No.53 of 2011, before the Motor Accident Claims Tribunal cum Sub Judge, Aruppukottai.

3.The Tribunal after analyzing the evidence and documents available on records, had given a finding that the accident had occurred only due to the rash and negligent driving on the part of the second respondent, who is the driver of the Tractor, which is insured with the appellant/Insurance Company and the appellant has to pay the compensation to the claimant. Accordingly, the Tribunal awarded a sum of Rs.4,15,500/- on various heads.

4.The appellant/Insurance Company denied the said claim, claimed by the claimant under various heads, as excessive. Aggrieved against the said liability, the appellant/Insurance Company, who being the insurer of the second respondent's vehicle, preferred this Civil Miscellaneous Appeal.

5.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent.

6.The learned counsel for the appellant, in the grounds of appeal, has stated that the insured vehicle was driven by the second respondent viz., Raju Thevar. It is also seen that the F.I.R. was registered against the 2nd respondent and a charge sheet was also filed against him for which, the documents have been produced before the Tribunal as Ex.P.1 - F.I.R. and Ex.P.2 - charge sheet.

7.The learned counsel for the appellant/Insurance Company submitted that the accident occurred only due to the rash and negligent driving on the part of the driver of the Tractor. Therefore, the appellant/Insurance Company is no way responsible for the alleged accident and they are not entitled to pay compensation to the respondent/claimant. It is further stated that this appeal is liable to be dismissed.

8.It is the contention of the appellant/ Insurance Company that as per the First Information Report, the accident took place on 31.12.2010, but, complaint was given to the police authorities on 14.02.2011, i.e., 44 days delay. Further, the vehicle was sent to the RTO office on 17.02.2011. In the discharge summary issued by the Meenakshi Mission Hospital, Madurai, it is clearly stated that “Alleged H/o. accidental fall on 31.12.2010, patient initially treated elsewhere and have come here for further treatment.”

9.The learned counsel for the appellant further contended that the Tribunal has failed to note that the injured was travelling on a tractor. As per the F.I.R, the injured was getting down from the mudguard of the Tractor, the driver rash and negligently driven the vehicle the injured fell down and sustained injury. Indisputably, the tractor was to be used only for agricultural purposes and not for carrying any passenger. The following principle of law has been laid down in the case of **Oriental Insurance Company Vs. Nattbi Bai and others (in Civil Appeal No.1718 of 2007, dated 30.03.2007).**

a) Insurer is not liable for gratuitous passenger travelling on the tractor.

b) There would not be any seat for any passenger on the tractor.

c) Only one person could travel on the tractor which evidently means the driver.

d) The company is fully exonerated and no order for pay and recover is passed.

10.The learned counsel for the appellant has also contended that the purpose of production of a disability certificate was only for assessment of the percentage of disability. The disability certificate was issued by the medical officer, who had the benefit of treating the injured, such medical officer would be in a better position to tender evidence with reference to the injury sustained by the claimant, treatment given, extent of permanent disability as well as the loss of earning capacity. However, in case, wherein certificates were issued by the medical officers other than the Doctor, who treated the injured, the evidence of such medical officers requires strict scrutiny. However, it cannot be said that such certificates are inadmissible in evidence. The evidence so tendered by the Doctors, who had no opportunity to treat the injured, should be convincing and it should be based on accepted norms. However, the lower court failed to note that the doctor, who examined and issued the Wound and Disability Certificate only deposed that the injured was having 60% of disability. They have not specifically and scientifically stated that such disability was permanent or partially permanent. The appellant/Insurance Company has contended that the disability assessed by the Tribunal is highly excessive and it is not the determination of the Medical Board. Hence, he prayed for the dismissing the award passed by the tribunal.

11.The learned counsel for the first respondent/claimant has contended that due to the accident, she was unable to do her regular work. She also contended that the claimant had under went surgeries in her left knee and there was bone fracture on her left side leg. The Trial Court has rightly assessed the award amount and hence, this Civil Miscellaneous Appeal is liable to be dismissed.

12.On perusal of the records it is observed that the claimant sustained severe injuries. The wound certificate Ex.C.1, and discharge summary Ex.P.8 were marked before the Tribunal. The wound certificate has revealed the fact that the trial proved the injuries sustained by the claimant is grievous injuries. The claimant was also taken treatment for a period of 53 days and in spite of the surgery and treatment given to her she was not in good health condition and these facts are very much discussed by the Trial Court. Further, the age of the claimant is also stated as 65 years. Hence, the Tribunal has taken it in a proper aspect and the same calculated in that aspect is very much reasonable. Further, a sum of Rs.4,15,000/- was awarded to the claimant under the various heads.

for permanent disability	=Rs. 60,000/-
for pain and sufferings	=Rs. 30,000/-
for medical expenses	=Rs.3,02,500/-
for loss of income	=Rs. 18,000/-
for Nourishment	=Rs. 5,000/-
Total	=Rs.4,15,000/-

13.The tribunal awarded a sum of Rs.60,000/- for permanent disability. As per Ex.C.1/wound certificate, the claimant sustained injuries for 60% disability. The same was observed by the Trial Court and hence awarded a sum of Rs.60,000/- for disability, which is confirmed.

14.The Tribunal awarded a sum of Rs.3,02,443/- for medical expenses. This Court is of the view that as per medical bills, which were marked as Ex.P.9 and Ex.P.10, the claimant had spent a sum of Rs.3,02,443/- for her medical expenses. The same was rightly observed by the Tribunal, which is also confirmed.

15.Further, the tribunal awarded a sum of Rs.5,000/- for her nourishment, which is also reasonable one and also considering the period of treatment under went by the claimant and also the injuries sustained by the claimant is also very much observed and hence, the same determination by the Tribunal under various heads is very much reasonable. Hence, the award passed by the tribunal is not excessive as stated by the appellant.

16.In view of the above said observations, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal in M.C.O.P.No.53 of 2011, dated 29.10.2013, on the file of the Motor Accidents Claims Tribunal cum Sub Judge, Aruppukottai, is confirmed. The appellant/Insurance Company is directed to deposit the award amount with accrued interest and costs, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the claimant is permitted to withdraw the award amount along with accrued interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal cum Sub Judge,

Aruppukottai.

2. The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to MR.K.BHASKARAN, Advocate (SR-60169[F] dated 10/04/2019)
+1 CC to M/S.VIJAYAKUMARI NATARAJAN, Advocate (SR-60421[F] dated 11/04/2019)

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