



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2019

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.1166 of 2018

and

CMP(MD)No.6673 of 2019

United India Insurance Company Limited
Through its Branch Manager
Jeyamkondan ... Appellant/2nd Respondent

vs.

1.Thennarasu ...1st Respondent/Petitioner

2.Immanuel 2nd Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in MCOP.No.348 of 2015 dated 13.08.2018 on the file of the Motor Accidents Claims Tribunal, Additional District Court (FTC), Kumbakonam.

For Appellant : Mr.N.Dilipkumar

For Respondent No.1 : Mr.N.Sudhagar Nagaraj

JUDGMENT

The present appeal has been filed against the award made in MCOP.No.348 of 2015 dated 13.08.2018 on the file of the Motor Accidents Claims Tribunal, Additional District Court (FTC), Kumbakonam.

2.It is the case of the first respondent/claimant that on 25.12.2014 at about 4.00 p.m when the first respondent/claimant was going in an unregistered two wheeler at Mullangudi main road near rice mill from eastern side to western side, the driver of the second respondent's vehicle bearing Registration No.TN 22 BZ 1932 drove the vehicle in a rash and negligent manner and dashed against the claimant's vehicle, thereby, the claimant sustained multiple injuries on his body and immediately, he was admitted in the Kumbakonam Sugam Hospital for treatment. For which, the first respondent/claimant has filed M.C.O.P.No.348 of 2015 claiming compensation of Rs.15,00,000/-. The appellant filed counter



affidavit denying the involvement of the vehicle insured with them. They also disputed the age, avocation, income of the deceased and compensation claimed under various heads.

3.Considering the oral and documentary evidence adduced on either side, the Tribunal held that the driver of the second respondent's vehicle was responsible for the accident and directed the appellant to pay compensation of Rs.2,83,455/- with 7.5% interest per annum from the date of petition till the date of deposit. Aggrieved by the said award, the appellant has filed this appeal questioning the liability and quantum.

4.The learned counsel for the appellant would state that the first respondent/claimant was under influence of alcohol. He came from the wrong side of the road and he only drove the vehicle in a rash and negligent manner and dashed against the right side of the Car's front wheel and therefore, the claimant alone is responsible for the accident. Exhibit P.3, Accident Register also reveals that the injured was under the influence of alcohol. The learned counsel further submitted that the deposition of the Doctor(R.W.1) shows that the injured was under influence of alcohol at the time of admission. Hence, the injured had certainly negligent in driving the two wheeler. Further, he submitted that Exhibit P10,disability certificate shows 40% temporary disability of the claimant, whereas the learned Judge has taken 40% temporary disability as permanent disability. The learned Judge erred in awarding a sum of Rs.39,000/- towards loss of income for six months by fixing monthly income of Rs.6,500/- for the injured in the absence of any material. Hence, the learned counsel for the appellant prays to modify the award passed by the Tribunal.

5.I have heard the learned counsel for the appellant and the learned counsel for the first respondent/claimant and perused the materials available on record.

6.The learned counsel for the first respondent/claimant brought to the notice of this Court that paragraph No.12 of order passed by the learned Tribunal, wherein, the Doctor (R.W.1) has stated that the first respondent/claimant had not been tested at the time of admission.

In Section 185 of the Motor Vehicles Act, 1988, it has been held as follows:

"Driving by a drunken person or by a person under the influence of drugs, whoever,while driving or attempting to drive a motor vehicle,

(a)has in his blood, alcohol exceeding 30 mg per 100 ml of blood detected in test by a breath analyser or



(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle,
shall be punishable....."

7. In the present case on hand, it is seen that the petitioner has not been subjected to blood test and therefore, the learned Judge has rightly ordered compensation. Further, the Hon'ble Supreme Court in **Syed Sadiq vs. United India Insurance Co.Ltd., reported in 2014 (1) TN MAC 459(SC)**, has fixed the monthly income at Rs.6,500/- for a vegetable vendor where there was no proof of income. Therefore, the fixation of monthly income at Rs.6,500/- which cannot be said to be erroneous. Consequently, the award of Rs.39,000/- under the head of loss of income for six months, cannot be found fault with. Apart from the above, the Tribunal has awarded a sum of Rs.3000/- towards each disability and the award of Rs.1,20,000/- (40X Rs.3000) towards partial permanent disability, is not excessive. Further, the Tribunal has awarded a sum of Rs.40,000/- towards pain and sufferings; Rs.3,000/- towards attendant charges; Rs.10,000/- towards nutrition; Rs.4,000/- towards transportation and Rs.20,855/- and Rs.46,600/- towards medical expenses. Altogether, the Tribunal has awarded Rs.2,83,455/- with 7.5% interest per annum as compensation, which in my considered opinion, the award passed by the Tribunal is not excessive. Therefore, the order passed by the learned Additional District Judge (Fast Track Court), Kumbakonam in M.C.O.P.No.348 of 2015 does not warrant any interference by this Court.

8. At this juncture, the learned counsel for the appellant submitted that he has already deposited the entire award amount with interest and costs to the credit of the claim petition. Therefore, the 1st respondent/claimant is permitted to withdraw the entire award amount with interest by filing a permission petition before the Tribunal.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

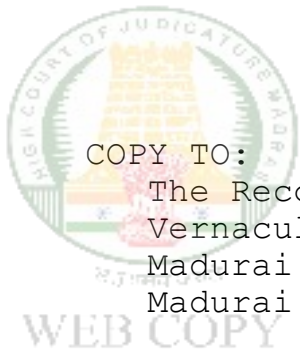
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Sub Assistant Registrar

msa
To

The Additional District Judge/
Motor Accidents Claims Tribunal,
(Fast Track Court), Kumbakonam

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JM/15.10.2019/4P/6C