

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.205 of 2019

United India Insurance Company Limited,
Regional Office, Opp Park Gate,
Dr.Nanjappa Road, Coimbatore 18. .. Appellant/
3rd Respondent

Vs.

1.R.Ramakrishnan ...1st Respondent/Petitioner
2.S.Saravanan ...2nd Respondent/1st Respondent
3.V.Sakthivel ...3rd Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.07.2018 made in M.C.O.P.No.484 of 2016 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant : M/s.I.Malar

For Respondents : Mr.E.D.Sethupathi for R1
R2 & R3 Not Ready in Notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 05.07.2018 made in M.C.O.P.No.484 of 2016 on the file of Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore.

2.The appellant/Insurance Company is the 3rd respondent in M.C.O.P.No.484 of 2016 on the file of Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore. The 1st respondent filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.09.2015.

3.According to the 1st respondent, while he was driving his Maruti 800 car on the Coimbatore to Mettupalayam road from North to South direction, near 4th gate Sri Ramakrishna Vidyalaya, Periyanaicken palayam, a speeding Tata 407 van belonging to the

3rd respondent driven by the second respondent in a rash and negligent manner, dashed against the 1st respondent's car and caused the accident. The 3rd respondent is the owner, 2nd respondent is the driver and the appellant is the insurer of the car. In the accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the respondents 2, 3 and appellant.

4.The respondents 2 and 3 remained ex parte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the accident occurred only due to rash and negligence driving of the first respondent, who drove the car in a rash and negligent manner. The First Information Report was registered against the first respondent. The first respondent is only responsible for the accident. Hence, the appellant/Insurance Company is not liable to pay any compensation to the first respondent.

6.Before the Tribunal, the first respondent examined himself as P.W.1 and one Easwaramoorthy as P.W.2 and 12 documents were marked as Exs.P1 to P12. On the side of the appellant/Insurance Company, no witness was examined and one document was marked as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the driver of the car as well as the van, fixed 20:80 negligence arrived at a sum of Rs.3,32,589/- as compensation and directed the appellant being the insurer of the van to deposit 80% of the award amount, i.e., Rs.2,66,071/- as compensation to the first respondent.

8.Challenging the quantum as well as 80% liability fastened on them by the award dated 05.07.2018, made in M.C.O.P.No.484 of 2016, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the first respondent drove the vehicle in a rash and negligent manner and dashed against the van at his own fault. The first respondent is the tort-feasor in the accident. The Tribunal has fixed only 20% contributory negligence against the first respondent. The First Information Report was registered only against the first respondent. The driver of the car/first respondent alone is responsible for the accident at his own fault. The Tribunal ought to have fixed

entire negligence on the part of the driver of the car/first respondent herein. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the first respondent contended that the accident occurred only due to rash and negligent driving by the driver of the van/second respondent belonging to the third respondent. The appellant did not examine any witness to fix negligence on the first respondent. In the absence of any contra evidence on behalf of the appellant-Insurance Company, the Tribunal erred in fixing 20% contributory negligence on the part of the first respondent and directed the appellant-Insurance Company to pay only 80% of the award amount. In any event, the total compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and setting aside the portion of the award fixing 20% negligence on the first respondent.

11. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel for the first respondent and perused the entire materials on record.

12. It is the contention of the first respondent that he drove the car abiding by traffic rules at a moderate speed and the driver of the van/second respondent belonging to the third respondent drove the same in a rash and negligent manner and dashed against him and caused the accident. The first respondent examined himself as P.W.1. The appellant did not examine the driver of the van or any eyewitness to prove their contention that the accident has occurred only due to the rash and negligent driving by the first respondent.

13. The first respondent, who is the victim/eyewitness has deposed that the driver of the van drove the same in a rash and negligent manner and dashed him from behind. To disprove the said evidence, the appellant did not examine the driver of the van or any independent eyewitness. The First Information Report is registered against the first respondent. Mere filing of FIR against the first respondent cannot be that the first respondent is responsible for the accident. The Tribunal has appreciated these materials in proper perspective and rightly fixed 20% contributory negligence on the part of the first respondent and 80% negligence on the part of the driver of the van/second respondent belonging to the third respondent for the rash and negligent driving. The Tribunal considering the above materials has held that the accident has occurred only due to rash and negligent driving by the driver of the van. There is no error in the said finding.

14.As far as quantum of compensation is concerned, the 1st respondent examined himself as P.W.1 and the first respondent was not examined any eyewitness to prove the nature of injuries, period of treatment and disability suffered by him. The appellant has not let in contra evidence to disprove the evidence of PW1. The Tribunal considering the entire materials, accepted the evidence of 1st respondent as PW1 and awarded compensation under different heads which are not excessive, warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.2,66,071/- along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit 80% of 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.484 of 2016 on the file of Motor Accidents Claims Tribunal, Special Subordinate Judge, Coimbatore. On such deposit, the first respondent/ claimant is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

vkr
To

1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Coimbatore.

Copy to:
The Section Officer,
VR Section,
High Court,
Madras.

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+1 cc to Mr.T.Ravichandran Advocate sr6804
+1 cc to Mr.E.D.Sethupathi Advocate sr6269

C.M.A.No.205 of 2019

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