

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1062 of 2010
and M.P.No.1 of 2010

United India Insurance Company Ltd.,
38, Anna Salai, Chennai - 2.

... Appellant /2nd Respondent

Vs.

1.K.Kamurudeen S/o Sultan Basha ...Respondent/Petitioner
2.S.Muniyasamy ... Respondents/Ist Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.12.2008 made in M.C.O.P.No.4816 of 2006 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Mr.D.Bhaskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 05.12.2008 made in M.C.O.P.No.4816 of 2006 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is the 2nd respondent in M.C.O.P.No.4816 of 2006 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai. The first respondent filed the said claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.10.2006.

3.According to the 1st respondent, while he was riding in his bicycle on Madhavaram High Road near Don Bosco School, the driver of the lorry bearing Registration No.TN-23-S-4707 drove the lorry in a rash and negligent manner and dashed against the bicycle. Due to the impact, the 1st respondent sustained grievous injuries. The 2nd respondent is the owner and the appellant is

the insurer of the lorry. Therefore, the 1st respondent has filed the claim petition claiming compensation against second respondent and appellant.

4.The 2nd respondent 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 solely due to rash and negligent riding of the bicycle by the 1st respondent and the alleged accident is also denied by the 2nd respondent. The first respondent has to prove the age, income, nature of injuries, medical expenses incurred due to the injuries sustained in the accident by producing documentary evidence. In any event, the total amount claimed as compensation is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.N.Saichandran was examined as P.W.2 and marked six documents as Exs.P1 to P6. The appellant, did not let in any oral or documentary evidence before the Tribunal.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the lorry belonging to the second respondent and directed the appellant-Insurance Company to pay a sum of Rs.2,00,000/- as compensation to the first respondent.

8.Challenging the award of the Tribunal dated 05.12.2008 made in M.C.O.P.No.4816 of 2006, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal failed to see that the accident has occurred only due to negligence on the part of the 1st respondent. In any event, the Tribunal ought to have apportioned the liability equally on the part of 1st respondent as well as driver of the lorry. The Tribunal failed to adjudicate the injuries, nature of injuries, period of treatment, the disability assessed by P.W.2-Doctor properly. The first respondent failed to prove that he suffered functional disability. The Tribunal erred in adopting the multiplier method. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10.Heard the learned counsel appearing for the appellant and perused the materials available on record.

11.It is the contention of the 1st respondent that while he was riding his bicycle on Madhavaram High Road near Don Bosco School, the driver of the lorry bearing Registration No.TN-23-S-4707 drove the lorry in a rash and negligent manner and dashed against the bicycle from behind and caused the accident. In the accident, the 1st respondent sustained multiple injuries and suffered disability. To prove the said contention, he examined himself as P.W.1 and marked FIR which was registered against the driver of the lorry. The appellant has not let in any evidence to disprove the evidence of 1st respondent. The Tribunal considering the evidence of 1st respondent as P.W.1, Ex.P1 and no contra evidence was let in by the appellant held that the accident has occurred only due to rash and negligent driving by the driver of the lorry. The learned counsel appearing for the appellant now contended that the Tribunal ought to have apportioned the liability on the 1st respondent and driver of the lorry. The appellant has not pleaded so in the counter statement filed before the Tribunal and let in any evidence to disprove the evidence of 1st respondent. In view of the same, there is no reason to interfere with the finding of the Tribunal that the accident has occurred only due to rash and negligent driving by the driver of the lorry.

12.As far as the quantum of compensation is concerned, the 1st respondent claimed that he was working as a Tailor in a private company and was earning a sum of Rs.7,500/- per month. He failed to substantiate the same. In the absence of any material evidence, the Tribunal fixed notional income of the 1st respondent at Rs.3,000/- per month. Considering the nature of injuries and treatment taken, P.W.2/doctor assessed the disability of the appellant as 40%. The Tribunal reduced the percentage of disability to 35% on the ground that assessment of disability by P.W.2/Doctor is on the higher side and relying on the judgment reported in 2002(1) Law Weekly page 782 held that the 1st respondent being a tailor is entitled to get compensation by applying multiplier method. The reason given by the Tribunal for applying multiplier method is valid. The 1st respondent was aged 32 years at the time of accident. The applicable multiplier is '17', the Tribunal applied multiplier '12' and granted compensation for 35%. The monthly income fixed by the Tribunal is meagre and the Tribunal applied lesser multiplier. For the above said reason, the amounts granted by the Tribunal under different heads are not interfered with.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal as compensation to the first respondent/claimant is hereby 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.4816 of 2006. On such deposit, the first respondent is permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judge,
Motor Accidents Claims Tribunal,
Small Causes Court No.III,
Chennai.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

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