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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1475 of 2011
and M.P.No.1 of 2011
and Cross Obj.SR.No.104910/2012

(Through Video Conferencing)

C.M.A.No.1475 of 2011

United India Insurance Co., Ltd.,
No.70,N.S.C.Bose Road,
Sowcarpet,
Chennai-600 079.

... Appellant/2nd Respondent

vs.

1.N.Annadurai
2.P.Suresh
(The 2nd respondent remained exparte
before the lower court, hence notice
to him may be dispensed with)

...1st Respondent/Claimant

...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.661 of 2007 dated 18.06.2010 on the file of the Motor Accidents Claims Tribunal, (Additional District and Sessions Judge) Fast Track Court No.IV, Chennai.

For Appellant : Mr.C.Paranthaman
For R1 : No Appearance

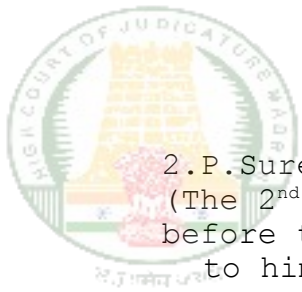
Cross Obj.SR.No.104910 of 2012

N.Annadurai

.. Appellant/Claimant

vs

1.United India Insurance Co., Ltd.,
Rep.by its Branch Manager,
Pondicherry.



2.P.Suresh

(The 2nd respondent remained exparte
before the lower court, hence notice
to him may be dispensed with)

.. Respondents/Respondents

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Cross Objection SR filed under Rule 22 of Order XXXXI of the Civil Procedure Code 1908, the compensation awarded by the lower court at Rs.98,500/- is to be enhanced to Rs.2,00,000/-.

For Appellant : No Appearance

For R1 : Mr.C.Paranthaman

C O M M O N J U D G M E N T

The present Appeal has been filed by the appellant-Insurance Company in this Appeal. The appellant - Insurance Company has questioned the quantum of compensation awarded by the Motor Accident Claims Tribunal (Additional District and Sessions Judge) Fast Track Court No.IV, Chennai in M.C.O.P.No.661 of 2007.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.98,500/- as compensation together with interest at 7.5% from the date of the claim petition till the date of deposit, to the 1st respondent/claimant. Aggrieved by the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3. There is no dispute in the facts. In this appeal, the appellant-Insurance Company has sought to assail the impugned Judgment and Decree primarily on the ground that the insured auto can carry only three passengers apart from the driver, but four persons travelled as passengers.

4. That apart the quantum of compensation awarded by the Tribunal is assailed on the ground that the witness viz., P.W.2 has ex-aggregated the nature of injury and the disability of the 1st respondent-claimant and therefore the amount awarded by the Tribunal was liable to be reduced .

5. I have considered the arguments advanced by the learned counsel for the appellant and I have also perused the evidence available on record.

6. As far as the injuries are concerned, the Tribunal has categorically given a finding regarding the nature of injury suffered by the 1st respondent. The 1st respondent suffered lacerated wound on right forearm and was bleeding with swelling and tenderness on right knee, lacerated wound on right frontal



region. CT brain scan reveals Hametoma on right frontal region and the appellant was referred to Government General Hospital, Chennai. Ex.P.4 wound certificate issued by the Dental department, Government Kilpauk Medical College Hospital reveals that fracture root of 21st region. Therefore, the nature of injuries are grievous. Ex.P.7- Scan Report dated 15.10.2006 it is found that linear hemorrhagic contusion seen on right frontal bone with an overlying scalp swelling.

7. The 1st respondent had also examined doctors to prove the disability. Dr.J.R.R.Thiyagarajan who was examined as P.W.2 deposed that due to head injury, the 1st respondent suffered from head ache, giddiness, shivering on the left leg and left hand and loss remembrance assessed 25% disability. The doctor further assessed 30% disability due to joint dislocation the right leg knee. The 1st respondent was treated conservatively for head injury and also for dislocation of right knee joint. He suffered some inconvenience due to head injury and dislocation of right knee joint. Overall 55% disability was assessed by the said doctor. The Tribunal has fixed overall 40% disability of the 1st respondent to award the compensation. The quantum of the compensation awarded to the 1st respondent-claimant for the injuries suffered by him appears to be reasonable. I therefore do not find any merits in the present appeal insofar as the quantum of compensation is concerned.

8. At the same time, it is noticed that the Tribunal failed to consider the fact that the owner of the vehicle, namely the 2nd respondent violated the policy condition by allowing four persons to be seated at the back side of the auto-rickshaw. Therefore, I direct the appellant-Insurance company to pay the compensation to the 1st respondent-claimant and recover the aforesaid amount from the 2nd respondent - owner of the insured auto in terms of the decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Nanjappan and Others, (2004) 13 SCC 224.

9. The appellant Insurance Company is therefore directed to deposit the compensation awarded together with interest at 7.5% from the date of the claim petition till the date of deposit and cost, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

10. On such deposit, the 1st respondent/claimant is permitted to withdraw the same together with interest, by filing suitable application before the Tribunal.

11. The appellant-Insurance Company may proceed to recover the aforesaid amount of compensation from the 2nd respondent



owner of the vehicle as per the above decision of the Hon'ble Supreme Court.

12. Accordingly, C.M.A.No.1475 of 2011 is dismissed with the above observation. Cross Obj.SR.No.604910 of 2012 is also closed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

kkd

Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accidents Claims Tribunal,
(Additional District and Sessions Judge)
Fast Track Court No.IV, Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras-104.

+1cc to Mr.C.Paranthaman, Advocate, S.R.No.41519

C.M.A.No.1475 of 2011
and M.P.No.1 of 2011 and
Cross.Obj.Sr.604910 of 2012

CP(CO)
CB(13/09/2021)