

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.985 of 2010
and MP.No.1 of 2010

United India Insurance Co. Ltd.,
No.19/2A Junction Main Road,
opp to Raja Kalyana Mahal,
Five Road, Salem - 636 004.

... Appellant/2nd Respondent

Vs.

1.Syed Bilal

...1st Respondent/Petitioner

2.Raja Kamalam

...2nd Respondent/1st Respon

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.395 of 2006 dated 26.03.2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.M.J.Vijayaraghavan.

For Respondent : Mr.C.Thangaraju for R1.
R2 - Exparte.

J U D G M E N T

This appeal has been filed against the judgment and decree made in MCOP.No.395 of 2006 dated 26.03.2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

2. The case of the first respondent/claimant before the Tribunal is as follows :-

The case of the claimant/first respondent is that on 07.09.2005, he was riding Bajaj CT 100 bike bearing registration TN 28 L 9518 near Trichy, Alazhu Nagar Junction in a slow and steady manner, a Maruti van bearing Registration No.TN30-C-3939 came in a rash and negligent manner and dashed against the first respondent bike. The claimant was admitted in Government Hospital, Namakkal and from there he was shifted to AG Neuro Hospital and thereafter shifted to Salem for further treatment. At the time of accident, the claimant was pursuing engineering

course, after the said accident the claimant discontinued the engineering course. An FIR has been filed in Namakkal Police station in Cr.No.992 of 2005 for the offences under Section 279 and 337 IPC.

3. The appellant/second respondent/insurance company denied that the accident has not occurred due to rash and negligent driving of the Maruthi car driver. The injuries are being exaggerated for filing the claim petition. The claimant was not holding valid licence to drive the bike, at the time of accident, the claimant was not driving the bike, he was crossing the road without noticing the oncoming vehicle. The accident took place only on account of the negligence of the claimant and the insurance company is not liable to pay the compensation.

4. In order to prove the case of the claimant, the claimant examined PW1 and PW2 and marked Ex.P1 to Ex.P12. No oral and documentary evidence has been marked on the side of the respondents.

5. Heard both sides and perused the materials available on record.

6. The learned counsel for the appellant/insurance company mainly contended that the accident took place on 07.09.2005. At the time of accident the claimant was pursuing his studies and a non earning person, the Tribunal ought not to have fixed the monthly income of the claimant notionally as Rs.3,000/-p.m. The head injuries sustained by the claimant is a non schedule injury against which PW2/Doctor assessed the physical deformity to the extent of 25%, even though the percentage of disability has been issued to the extent of 25% by PW2, which is in any event cannot be equated.

7. The learned counsel for the first respondent/claimant submits that subsequent to the accident, the claimant discontinued his studies. PW2/Doctor deposed that due to the head injury the claimant could not study continuously and often he feels giddiness. He further stated that the claimant was not in a position to carry any heavy objects with the help of his left hand.

8. From the available records, it is seen that the tribunal has rightly fixed the compensation on the basis of the disability certificate/Ex.P10 issued by the PW2/Doctor, the disability assessed by PW2 seems to be very reasonable. On a perusal of the CT scan report and other medical records, due to the head injuries sustained by the claimant, the claimant discontinued his studies and he could not concentrate constantly in any work. As a result of the said accident, the future life,

career, dream of the claimant has been doomed and become dark. Failure on the part of the learned counsel appearing for the appellant/insurance company to produce any contra evidence, this Court is not inclined to interfere with the award passed by the Tribunal.

9. In the result, the civil miscellaneous petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Namakkal.

2. The Section Officer

VR Section

High Court, Madras 104.

+1 CC to Mr.M.J.Vijayaraghavan, Advocate sr 3971.

+2 Ccs to Mr.C.Thangaraju, Advocate sr 3843.

C.M.A.No.985 of 2010

JP (CO)

SP(22/01/2021)

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