

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.08.2020
CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1624 of 2011
and
M.P.No.1 of 2011

United India Insurance Co. Ltd.,
Rep. By its Manager, Nethaji
Bye Pass Road, Dharmapuri.

... Appellant/2nd Respondent

...Vs...

1.Chandra ...1st Respondent/Claimant
2.Sivakumar ...2nd Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 04.09.2008 made in MCOP.No.378 of 2006, on the file of the Motor Accident Claims Tribunal / Additional District Judge, Dharmapuri.

For Appellant : Mr.S.Arun Kumar

J U D G M E N T

(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the Appellant/Insurance Company challenging the award dated 04.09.2008 passed by the the Motor Accident Claims Tribunal / Additional District Judge, Dharmapuri in MCOP.No.378 of 2006.

2. Heard Mr.S.Arun Kumar, learned counsel for the Appellant.

3. The Appellant has challenged the award on the ground that the quantum of compensation awarded by the Tribunal is excessive and also on the ground that they are not liable to compensate the claim of the claimant, since the driver of the insured vehicle was not possessing a driving license at the time of the accident.

4. The Tribunal under the impugned award has awarded a compensation of Rs.67,388/- together with interest and costs to the claimant as detailed hereunder:

Heads	Award Amount (Rs.)
Permanent disability at 40%	40,000/-
Pain and sufferings	10,000/-
Transport charges	2,000/-
Nourishment	1,000/-
Attender charges	1,000/-
Medical Expenses	13,388/-
Total	67,388/-

5. The claimant has sustained a fracture in the left femur bone and super condylan fracture. He has also sustained injury in his head and left hand and multiple injuries all over his body as a result of the accident.

6. Before the Tribunal, the claimant has filed eight documents which were marked as Ex.A1 to Ex.A8 and two witnesses were examined on her side namely, the claimant herself as PW1 and the Doctor who examined her, as PW2. On the side of the Appellant/Insurance Company, one document was filed which was marked as Ex.R1 and three witnesses were examined namely, RW1 to RW3.

7. The Doctor has assessed the disability of the first respondent/claimant at 55% as seen from the disability certificate Ex.A8. However, the Tribunal has assessed the disability only at 40%. The claimant in his claim petition has claimed that he was a Tamararind Crushing Labourer and Milk vendor earning monthly income of Rs.5000/- and he was aged 35 years at the time of the accident. The Tribunal has taken into consideration all these factors and only thereafter, assessed the compensation as observed earlier in this judgment. This Court does not find any infirmity in the assessment of compensation made by the Tribunal under the impugned award.

8. Insofar as the second contention raised by the Appellant namely, non-possession of driving license by the driver of the insured vehicle at the time of the accident is concerned, as seen from the evidence available on record, there is no admission made by the claimant that the driver of the insured

vehicle was not possessing any valid license. The Appellant Insurance Company has also not examined the driver of the insured vehicle nor sent any notice to the insurer or the driver of the insured vehicle calling upon them to produce a copy of the driving license. This being the case, the Tribunal has rightly not granted pay and recovery rights to the Appellant Insurance Company.

Conclusion:

9. For the forgoing reasons, the contentions raised by the Appellant have to be rejected as there is no merit in this appeal. Accordingly, this appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal after deducting the amount already deposited, if any, to the credit of MCOP.No.378 of 2006 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.THE MOTOR ACCIDENT CLAIMS TRIBUNAL / ADDITIONAL DISTRICT JUDGE, DHARMAPURI.

COPY TO:

THE SECTION OFFICER, VR SECTION, HIGH COURT, MADRAS.

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A.SK(26.03.2021)