

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1839 of 2015

and

M.P.No.1 of 2015

M/s.ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED,
Rep.by its Manager,
ICICI Bank Towers,
Boandra Kuria Complex,
(East) Mumbai - 400 051.

... Appellant/2nd Respondent

Vs.

1.Muniappa
S/o Pandiyappa

...1st Respondent/Petitioner

2.Kannagi
S/o Murugan

...2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 16.11.2012 in MCOP No.426 of 2009 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Krishnagiri.

For Appellant : Ms.R.Sree Vidhya

For Respondents : Mr.Mukund R.Pandiyar for R1
R2 - Exparte

J U D G M E N T

The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 16.11.2012 in MCOP No.426 of 2009 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Krishnagiri.

2. The judgment and decree dated 16.11.2012 is sought to be quashed in the present Civil Miscellaneous Appeal. The accident occurred on 09.02.2009 at about 09:30 hours through the lands of Munusamy in Rayakotta-Kelamangalam Road, Rayakottai Police

Station registered a case in Crime No.29/2009, under Sections 279 and 337 IPC. The petitioner was driving Yamaha Motor Cycle and on account of the accident, the claimant suffered Head injury, Fracture of right hand, Laceration on the left fore arm, Lower jaw two teeth missing. On account of the accident, the claim petition was filed claiming a total compensation of Rs.5,00,000/-. The trial Court adjudicated the issues and found that the claim is entitled for compensation of Rs.1,72,900/-

3. The learned counsel appearing on behalf the appellant contended that the appeal is filed mainly on the ground of negligence as well as the quantum. As far as the negligence is concerned, the criminal case registered against the claimant was ended with an order of acquittal. On the order of acquittal, the learned counsel for the appellant solicited the attention of this Court by stating that the trial Court also considered that the appellant was acquitted and the negligence aspect was not properly considered by the Tribunal with reference to the evidences produced before the Tribunal. As far as the first point is concerned, whether the rash and negligent riding of the respondent's Tata Ace vehicle's driver caused the accident, the Tribunal comes to the conclusion as Ex.A9 Insurance Policy for Tata Ace is in the name of the 1st respondent, his driver's negligent act is the cause for the accident and accordingly, answered point No.1.

4. In the event of such a finding, the counsel for the appellant contended that the liability is to be fixed on the appellant / claimant and the Tribunal has committed an error on fixation of compensation on the Insurance Company. However, this Court do not find any excessiveness and considering the nature of the injury sustained as well as the quantum of compensation of Rs.1,72,900/-, and the same cannot be held as disproportionate in comparison with the injury succumbed by the claimant.

5. With reference to the second aspect is concerned, though the Tribunal found that the first respondent was negligent, the said factor cannot be held against the claimant / appellant and this being the factum, this Court do not find any perversity or infirmity with reference to the findings arrived by the Tribunal as well as the quantum of compensation granted.

6. Thus, the judgment dated 16.11.2012 passed in M.C.O.P.No.426 of 2009 stands confirmed and C.M.A.No.1839 of 2015 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

7. It is brought to the notice of this Court that the entire award amount had already been deposited along with the interest. Thus, the respondents/claimants are permitted to withdraw the entire award amount with accrued interest by filing an appropriate application and all the payments are to be made through the RTGS.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal (Principal Subordinate Judge),
Krishnagiri.

Copy to

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.Mukund R.Pandiyar, Advocate Sr.18973

+1cc to Ms.R.Sreevidhya, Advocate Sr.19368

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mr[co]
srg 14/08/2020