IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.07.2020
CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No. 928 of 2012

United India Insurance Co. Ltd.,
(Motor Third party Cell)
No.38, Anna Salai,
Chennai-600 002. .... Appellant /2nd Respondent

versus

1. N.Malliga

2. B.Shankar ... Respondents/Petitioner & 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.09.2009 made in MCOP. no.3596 of 2006 on the file of the Motor Accident Claims Tribunal (III Judge, Court of Small Causes), Chennai.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : R1 - notice served - No appearance
R2 - Exparte

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

This appeal has been filed by the appellant/insurance company challenging the common award dated 07.09.2009 in MCOP. No.3596 of 2006 passed by the Motor Accident Claims Tribunal (III Judge, Court of Small Causes), Chennai.

Brief facts leading to the filing of this Appeal:

2. On 08.08.2006, at about 13.30 hours, when the first respondent was travelling in the Auto rickshaw bearing Registration No.TMA 1539 along with her husband, who drove the vehicle, proceeding from north to south at Medavakkam Tank Road, near ESI Hospital, Chennai, at that time, the motor cycle bearing registration No.TN 05 M 1507, dashed against the Auto rickshaw. As a result of the said accident, the first respondent sustained injuries. According to the appellant, the accident happened only due to the rash and negligent driving by both the vehicles.

3. The claimant preferred a claim petition before the Motor Accidents Claims Tribunal, III Judge, Court of Small Causes, Chennai in MCOP No.3596 of 2006, seeking compensation

for the injuries sustained by her, as a result of the said accident.

4. By the award dated 07.09.2009 in M.C.O.P. No.3596 of 2009, the Motor Accidents Claims Tribunal, (III Judge), Court of Small Causes, Chennai, directed the appellant/Insurance Company to pay the first respondent/claimant, a compensation of Rs.59,000/- together with interest @ 9.5.% per annum from the date of claim petition till the date of deposit, and also awarded costs.

5. The break-up details of the compensation awarded by the Tribunal in favour of the first respondent/claimant are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Transport to Hospital	1,000/-
Extra nourishment	1,000/-
Medical Expenses	2,000/-
Pain and sufferings	20,000/-
Disability	50,000/-
Total	59,000/-

6. The appellant/Insurance company has challenged the award on the ground that the driver of the insured motor cycle did not possess the Driving licence and therefore, they are not liable to be compensate the claim of the first respondent. They have also challenged the award on the ground that the tribunal has erroneously fixed the entire liability on the appellant/insurance company. According to them, since two vehicles were involved, the Tribunal ought to have apportioned the liability between both of them.

7. Challenging the award dated 07.09.2009, in M.C.O.P. No.3596 of 2006, this appeal has been filed by the Appellant / Insurance Company.

8. Heard Mr.M.Krishnamoorthy, learned counsel for the Appellant /Insurance company. Both the respondents have been duly served and their names have been printed in the cause list, neither they have not been represented by any counsel before this Court.

9. Before the Tribunal, the claimants have filed nine documents which were marked as Ex.P1 to Ex.P9 and three witnesses were examined viz., P.W.1 - Mr.N.Raman, P.W.2 - the Claimant herself and P.W.3 - the Doctor, who examined the claimant. On the side of the appellant/insurance company, no witness was examined and no document was adduced before the

tribunal.

10. Even though the appellant/Insurance company has contended that the driver of the insured vehicle did not possess the driving license at that time of the accident, no evidence has been adduced by them to disprove the same. FIR (Ex.P1) has also been registered only against the driver of the insured motor-cycle.

11. Insofar as the nature of injuries sustained by the first respondent/ claimant, as claimed by her, has not been disputed by the appellant/ insurance company before the Tribunal as seen from the materials and evidence available on record. The documents relied upon by the first respondent/claimant, in support of her claim has also not been disputed by the appellant/insurance company before the tribunal. The appellant/ insurance company has also not called upon the owner of the vehicle (insured) to produce the copy of the driving license of the rider of the motor cycle. This being the case, the contention of the first respondent that the driver of motor cycle was possessing a valid driving license at the time of the accident has to be necessarily accepted. The Tribunal has rightly rejected the stand taken by the appellant/insurance company that the rider of the motor-cycle (insured vehicle) was not possessing a valid driving license. The other contention raised by the appellant in this appeal is that the motor cycle (insured vehicle) dashed against the auto rickshaw and the said auto rickshaw is also equally responsible for the cause of the accident. However, no evidence has been adduced by the appellant/insurance company before the tribunal in support of their said contention. Further, the FIR has been registered only against the rider of the motor cycle (insured vehicle). There is no contra evidence to disprove the contention of the claimants that only due to the rash and negligent driving by the driver of the rider (insured vehicle) the accident had happened. The tribunal has rightly rejected the defence of the appellant that the driver of the Auto rickshaw is equally responsible for the cause of the accident.

Conclusion:

12. Further, the amount of compensation awarded by the Tribunal to the claimant is only Rs.59,000/- which is a meagre sum. Therefore, at this stage, after a lapse of almost 14 years, from the date of the accident which happened in the year 2006, no useful purpose would be served if the award is interfered with. But, under the impugned award, the Tribunal has awarded 9.5% future interest, which is not the settled practice adopted by all the tribunals in the State of Tamil Nadu. The settled uniform practice is to grant at the rate of 7.5% per annum. Excepting for this modification by this Court, the compensation awarded by the tribunal under the various heads, does not warrant any interference and the same is confirmed.

13. The appellant/Insurance Company is directed to deposit the award amount with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and costs, after deducting the amount, if any already deposited, to the credit of MCOP. No.3596 of 2006, dated 07.09.2009, within a period of four weeks from the date of receipt of a copy of this Judgment. Excess amount if any deposited, shall be withdrawn by the Insurance Company. On such deposit being made, the Tribunal is directed to transfer the amount to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter.

14. In the result, the Civil Miscellaneous Appeal is allowed in part. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

rli

To

1. The Motor Accident Claims Tribunal
   (III Judge, Court of Small Causes),
   Chennai.

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

C.M.A. No. 928 of 2012

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