

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1411 of 2018
and
C.M.P.No.11314 of 2018

The United India Insurance Company Limited,
No.457, Victoria Extn. Road,
Thoothukudi - 628 002 ... Appellant /2nd Respondent

Vs

1.Muthusamy ... 1st Respondent/Petitioner
2.Thalapathy ... 2nd Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 07.02.2018 made in MCOP. No.236 of 2015 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge, Rasipuram).

For Appellant : Mr. A. Dhiraviyanathan

For Respondents : Mr. C. Thangaraju(R1)
R2 : Set exparte before the Tribunal

J U D G M E N T

This appeal has been filed by the Insurance Company challenging the Award dated 07.02.2018 passed by the Motor Accidents Claims Tribunal, ((Sub Judge, Rasipuram), in M.C.O.P.No.236 of 2015.

2.The brief facts leading to the filing of this appeal are as follows:

On 26.04.2015 at about 07.00 p.m., the first respondent was riding his bicycle on the Rasipuram - Andagalur Gate Main Road. When he reached near Murugan Tea Shop on that road, the Bajaj Discover Two wheeler bearing Registration No.TN-67-AE-7056 belonging to the second respondent and insured with the appellant Insurance Company, came in a rash and negligent manner and hit against the bicycle. Due to the said impact, the first respondent sustained grievous injuries. The first respondent preferred a claim petition before the Motor Accidents Claims Tribunal in M.C.O.P.No.236 of 2015, seeking a compensation of

Rs.5,00,000/- . The Tribunal, by its award dated 07.02.2018 directed the appellant to pay the first respondent a sum of Rs.1,46,358/- together with interest at the rate of 7.5% per annum from the date of petition. Aggrieved by the same, this appeal has been filed by the Insurance Company.

3.The learned counsel for the appellant has submitted that three persons have travelled in the two-wheeler in question, which amounted to violation of Motor Vehicle Act and policy conditions. It is also submitted that the driver of the two-wheeler was not having a valid driving license at the time of accident and further the First Information Report was amended and the name of the rider was changed from Thalapathy to Palanisamy, which is an act of fraud for the purpose of claiming compensation and that the rider of the two-wheeler was under the influence of alcohol. On the other hand, he submitted that the compensation awarded by the Tribunal is excessive.

4.The learned counsel for the first respondent / claimant has submitted that the Tribunal has considered all the materials and evidence available on record and has rightly awarded the compensation to the claimant, which is just and reasonable and hence the judgment of the Tribunal need not be interfered with by this Court.

5.Heard both sides and perused the records.

6.After considering the materials and evidence on record, the Tribunal has observed that Ex.P4-Charge Sheet has been filed as against one Palanisamy, rider of the two-wheeler. It is also seen from the evidence adduced on record that only the two-wheeler bearing Reg.No.TN-67-AE-7056 was involved in the accident. Hence, the Tribunal has held that the accident had occurred only due to the rash and negligent driving of the rider of the two-wheeler. The Tribunal has also relied upon Ex.P3-Motor Vehicle Inspector's Report to come to the conclusion that there was a proper policy cover for the vehicle at the time of accident and further the rider was having a valid driving license. With regard to the contention put forth on the side of the Insurance Company before the Tribunal that the rider of the two-wheeler was under the influence of alcohol and hence violated the policy conditions and therefore, the Insurance Company is not liable to pay compensation to the claimant, the Tribunal has observed that the same has not been proved by the Insurance Company by subjecting the rider of the two-wheeler to medical examination, rather only a deposition is available to that effect, which cannot be simply relied upon to come to the conclusion that the rider was under the influence of alcohol at the relevant point of time.

7.The Tribunal has considered all the materials and evidence

available on record properly and rejected the contentions put forth on the side of the Insurance Company with regard to liability. Ample observations have been made by the Tribunal on a threadbare analysis of the matter to come to the conclusion that the Insurance Company is liable to pay compensation. This Court is not inclined to interfere with the said factual findings arrived at by the Tribunal.

8. With regard to the compensation awarded by the Tribunal, the Tribunal has relied upon the exhibits, evidence of witnesses, treatment records of the injured, percentage of disability assessed by the Doctor and all other aspects in a proper perspective and has awarded the compensation under various heads to the claimant. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and hence the same are confirmed.

9. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, the connected miscellaneous petition is closed. No costs. The appellant / Insurance Company is directed to deposit the entire compensation amount with interest and costs, as awarded by the Tribunal, less the amount if any already deposited within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/ claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-

Assistant Registrar (Audit)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
(Sub Judge, Rasipuram)

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

+1cc to Mr.C.Thangaraju, Advocate, S.R.No. 30189

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PP(CO)
GN(23/04/2021)