

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1653 of 2020

and

CMP.No.12175 of 2020

M/s. Bajaj Allianz General
Insurance Company Ltd.,
Door No.11, (Office No.6A),
Peoples Park, 3rd Floor,
Govt. Arts. College Road,
Coimbatore-641 018.

...Appellant / 2nd respondent

Vs.

1.C.Govindarajan,
S/o. Chinnasamy,
No.66/2, Bhuvaneshwari Nagar,
Thekkupalayam,
Coimbatore.

...1st Respondent / Petitioner

2.A.Kandasamy,
S/o. Angamuthu,
8/1, Kannan Nagar, 1st Street,
Ganapathy West,
Coimbatore.

...2nd Respondent / 1st Respondent

PRAYER :- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the Award and decree dated 14.08.2019 made in MCOP No.1487 of 2016 on the file of the Motor Accidents Claims Tribunal Special Subordinate Judge, Coimbatore.

For Appellant : Mr. M.B.Raghavan

J U D G M E N T

The insurance company, challenging the award passed by the Motor Accident Claims Tribunal / Special Subordinate Judge,

Coimbatore in MCOP. No.1487 of 2016 dated 14.08.2019, has filed this Civil Miscellaneous Appeal.

2. The case of the claimant before the Tribunal is that on 18.09.2016 at about 11.45 a.m. he was riding a motor cycle bearing Regn. No.TN-37 AK-0705 on the Coimbatore-Mettupalayam Road, while crossing the road from east to west, a car bearing Regn. No.TN-38 BL 6070 driven by the 1st respondent herein came from south to north in a rash and negligent manner and dashed against the claimant's motorcycle, in which he has sustained grievous injuries. Immediately, he was taken to K.R. Hospital, Coimbatore and undergone treatment for five days. At the time of accident, he was working as a Security Guard in Sky Tech, Coimbatore and getting a monthly income of Rs.8000/-. Due to the injury sustained in the accident, he was not able to continue his duty and claiming a compensation of Rs.2,50,000/-, he has filed the claim petition before the Tribunal.

3. The 1st respondent / owner of the vehicle remain exparte. The appellant insurance company has contested the claim petition on the ground that the accident was taken place due to the rash and negligent driving of the claimant C.Govindarajan, who has dashed against the car. Hence, no negligence would be fixed on the driver of the car. Even though a criminal case has been registered against the 1st respondent, after investigation, the police has closed the F.I.R. as mistake of fact. The insurance company has disputed the monthly income of claimant and contended that the compensation claimed by the claimant is highly excessive.

4. Before the tribunal, the claimant has examined himself as P.W.1 and marked as many as 6 documents as Ex.P1 to P6. On the side of respondent, the 2nd respondent therein has examined one witness and marked as many as 2 documents as Ex.R1 and R2.

5. The Tribunal, after considering the materials available on record, has held that the accident has been taken place due to the rash and negligent driving of driver of 1st respondent. So far as quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.25,000/- towards grievous injury, a sum of Rs.12,000/- towards loss of income, a sum of Rs.45,009/- towards medical bills, a sum of Rs.1,00,000/- towards pain and sufferings, a sum of Rs.10,000/- towards extra

nourishment, a sum of Rs.10,000/- towards transport expenses, and a sum of Rs.5,000/- towards damage to clothing and articles. Thus, totally, the Tribunal has awarded a sum of Rs.2,07,009/- as compensation. Now, aggrieved over the same, the appellant insurance company is before this Court with this appeal.

6. Mr.M.B.Raghavan, learned counsel appearing for appellant insurance company would submit that the accident was taken place due to the rash and negligent driving of claimant. It is only the claimant under the influence of alcohol driven the two wheeler in a rash and negligent manner and dashed against a car. A criminal case registered by the police against the 1st respondent was closed as mistake of fact, and the appellant insurance company is not liable to pay compensation. In respect of quantum of compensation, the claimant has only suffered a minor injury, for which, a sum of Rs.1 lakhs was awarded towards pain and suffering and a sum of Rs.25,000/- was awarded for grievous injuries suffered by the claimant. As the appellant insurance company is not liable to pay compensation, liability cannot be fixed on the appellant insurance company.

7. I have heard and considered the rival submissions made by the learned counsel appearing for appellant as well as respondents 1 to 3 and perused the records.

8. The insurance company mainly disputed its liability on the ground that the accident was taken place due to the rash and negligent driving of the claimant. From the perusal of records, it could be seen that the accident has been taken place while the claimant crossing the main road in a two wheeler, wherein the offending car came from south to north and hit the motorcycle. Immediately, the F.I.R. was given against the 1st respondent, driver of a car. Even though it is contended that the claimant was under the influence of alcohol, there is no evidence available on record to support the same. That apart, the driver of a car was also not examined to prove that only due to the negligent driving of claimant, the accident has been taken place. Merely because, the criminal case has been closed as mistake of fact, it cannot be a reason for letting off the driver to hold that the accident was taken place due to the negligence of the claimant. The Tribunal, after considering all those materials, has rightly held that the accident has been taken place due to the negligent driving of a car. So far as

quantum of compensation is concerned, the age of claimant was 57 years and he was working as a security guard, he has sustained injury in the left eye and also sustained injuries through out the body. After the accident, he was admitted in the hospital and taken treatment for five days and medical bills were produced for a sum of Rs.45,009/-. Considering all those circumstances, the Tribunal has rightly awarded a sum of Rs.2,07,009/-. Hence, it cannot be held as excessive and there is no reason to interfere with the same. Therefore, this C.M.A. is liable to be dismissed.

9. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Special Subordinate Judge,
Coimbatore.

Copy To

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

C.M.A.No.1653 of 2020
and
C.M.P. No. 12175 of 2020

RP(CO)
RVM(09/09/2021)