

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.2498 of 2014
and M.P. No. 1 of 2014

M/s. United India Insurance Co. Ltd.,
No.64, Armenian Street,
Chennai 1.

.. Appellant/2nd Respondent

Vs.

1.D. Mani

..Respondent/Claimant

2.A. Subramani

.. Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.03.2012, made in M.C.O.P. No.4638 of 2008, on the file of the Sub Court, (Motor Accident Claims Tribunal), Mettur.

For Appellant : Mr. J. Michael Visuvasam

For Respondents: Mr. A.A. Venkatesan (For R1)
No appearance (For R2)

R2 : Exparte

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 07.03.2012, made in M.C.O.P. No.4638 of 2008, on the file of the Sub Court, (Motor Accident Claims Tribunal), Mettur.

2.The appellant is the 2nd respondent in M.C.O.P. No.4638 of 2008, on the file of the Sub Court, (Motor Accident Claims Tribunal), Mettur. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.7,50,000/- as compensation for the injuries sustained by him in the accident that took place on 03.08.2008.

3. According to the 1st respondent, on the date of accident, when he was sitting on the left extreme side of the Ajees Mohamed Ghouse Street, the rider of the Motorcycle bearing Registration No. TN-03-A-8552 belonging to the 2nd respondent drove the same in a rash and negligent manner and dashed against the 1st respondent and caused the accident. The accident occurred due to rash and negligent riding by the rider of the Motorcycle belonging to the 2nd respondent. In the accident, the 1st respondent suffered multiple and grievous injuries. For the injuries suffered by him, the 1st respondent claimed compensation against the 2nd respondent and appellant, as owner and insurer of the offending vehicle.

4. The 2nd respondent remained exparte before the Tribunal.

5. The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the 1st respondent invited the accident by crossing the road negligently without seeing the oncoming vehicle and sustained only simple injuries in the accident. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1, examined Dr.N.Saichandran as P.W.2 and marked 8 documents as Exs.P1 to P8. The appellant did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Motorcycle belonging to the 2nd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.2,90,000/- as compensation to the 1st respondent.

8. Challenging the quantum of compensation granted by the Tribunal in the award dated 07.03.2012, made in M.C.O.P. No.4638 of 2008, the appellant - Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to see that 1st respondent has not filed any documents with regard to avocation and income and failed to prove the same. P.W.2 Doctor is not the Doctor who treated the 1st respondent. P.W.2 Doctor has issued disability certificate only for the purpose of claiming compensation and not based on any guidelines. The assessment of disability by P.W.2 Doctor at 60% is excessive. The total

compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10.The learned counsel appearing for the 1st respondent submitted that the 1st respondent died on 17.08.2014, after numbering the appeal and the entire award amount deposited by the appellant-Insurance Company was withdrawn by the 1st respondent before his death and made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the materials available on record.

12.From the materials on record, it is seen that it is the contention of the 1st respondent that in the accident, he suffered grievous injuries and fracture. He has taken treatment as in-patient in Government Stanley Hospital from 03.08.2008 to 06.11.2008, for a period of 94 days and continued his treatment as out-patient till 2011, for 3 years. The 1st respondent has produced Ex.P3 - Discharge Summary and Ex.P4 - copy of the continuous treatment book, to prove the treatment taken by him. According to the 1st respondent, he was a Mason at the time of accident and was earning a sum of Rs.200/- per day. The 1st respondent failed to substantiate the said contention. In the absence of any materials with regard to avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the 1st respondent. The accident is of the year 2008. The notional income fixed by the Tribunal is not excessive. The Tribunal considering the documents filed by the 1st respondent, granted compensation towards loss of income for 12 months. The compensation granted by the Tribunal is not excessive. The 1st respondent examined P.W.2 Doctor, who examined the 1st respondent and certified that the 1st respondent suffered 60% disability. P.W.2 Doctor also deposed to that effect. The appellant has not disproved the Disability Certificate and evidence of P.W.2 Doctor who is the authorized medical practitioner. In the absence of any contra evidence, the Tribunal accepted the evidence of P.W.2 Doctor and granted compensation at the rate of Rs.2,000/- per percentage for 60% disability and also awarded compensation under different heads, which are not excessive. There is no error in the said award of the Tribunal warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.2,90,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is

confirmed. The learned counsel appearing for the appellant-Insurance Company submitted that the appellant has deposited more than the award amount to the credit of M.C.O.P.No.4638 of 2008. In view of the same, the appellant is permitted to withdraw the excess amount deposited more than the award amount, if any, lying to the credit of M.C.O.P.No.4638 of 2008. It is made clear that if the 1st respondent/claimant has already withdrawn the award amount, the appellant/Insurance Company is not entitled to recover the same from the 1st respondent/claimant. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

gsa

To

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

Copy To

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

+1cc to Mr.J. Michael Visuvasam, Advocate SR.No.41775

+1cc to Mr.A.A. Venkatesan, Advocate SR.No.41660

C.M.A. No.2498 of 2014

RSV (CO)

GMV (11/05/2021)

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