IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.822 of 2014
and M.P.No.1 of 2014

M/s.United India Insurance Co. Ltd.
No.134, Greams road
Chennai-6. ... Appellant /II Respondent

Vs.

1.S.Krishnamoorthy ...1st Respondent / Claimant

2.J.Ramalingam ...2nd Respondent/ 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.10.2012 made in M.C.O.P.No.3881 of 2010 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.J.Chandran
For R1 : Mr.A.A.Venkatesan

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 challenging the award dated 09.10.2012 made in M.C.O.P.No.3881 of 2010 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.3881 of 2010 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. The 1st respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.08.2010.

3.According to the 1st respondent, on the date of accident i.e., on 11.08.2010, at about 14.15 hours, while he was travelling as a pillion rider in a motorcycle belonging to the 2nd respondent and proceeding along Koyambedu – Poonamallee High

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Road near Daniel Thomas School from West to East direction, the rider of the motorcycle rode the same in a rash and negligent manner, tried to overtake the bus on its right side and suddenly, the handle bar of the motorcycle grazed the right side corner of the bus, the rider of the motorcycle lost his control and fell down. Due to the accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the 2nd respondent and appellant.

4.The 2nd respondent, owner of the motorcycle remained exparte before the Tribunal.

5.The appellant/Insurance Company being insurer of the motorcycle filed counter statement denying the averments made by the 1st respondent and stated that the 2nd respondent, owner of the motorcycle issued cheque towards payment of premium and the policy was issued for the period from 08.06.2010 to 07.06.2011. The cheque was dishonoured and returned for want of funds. The appellant/Insurance Company intimated the same to the owner as well as the RTO. On the date of accident, i.e., on 11.08.2010, the policy was not in force. Therefore, the appellant/Insurance Company is not liable to pay compensation to the 1st respondent. The appellant/Insurance Company has also denied the age, occupation and income of the 1st respondent. In any event, the 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 and Dr.Saichandran was examined as P.W.2 and marked 13 documents as Exs.P1 to P13. The appellant/Insurance Company examined one Mr.P.Sukumar, Administrative Officer of the Insurance Company as R.W.1 and marked 5 documents as Exs.R1 to R5.

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/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.3,02,700/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent, owner of the motorcycle.

8.Against the said award dated 09.10.2012 made in M.C.O.P.No.3881 of 2010, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the accident has occurred only due to negligence of the 1st respondent and the Tribunal ought to have

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reduced the compensation under Section 140 of the Motor Vehicles Act. In the F.I.R., it has been stated that the bus dashed against the handle bar of the motorcycle, caused the accident and thereby, the rider of the motorcycle fell down and sustained injuries. The driver of the bus alone was shown as accused. The rough sketch shows that the driver of the bus came in the wrong side of the road and hit the motorcycle. In the Accident Register, it is mentioned that while the rider was riding the motorcycle, hit by a Government bus and fell on the road. The Tribunal ought to have dismissed the claim petition for non-joinder of necessary parties. The cheque issued by the 2nd respondent was dishonoured for in-sufficient funds on 20.06.2010 and the policy issued by the appellant was cancelled. On the date of accident, there was no policy in force. The Tribunal failed to consider the evidence of R.W.1 and erred in ordering pay and recovery. The percentage of disability assessed by P.W.2/Doctor, 20% functional disability fixed by the Tribunal and compensation awarded by adopting multiplier method are on the higher side in the absence of continuous treatment records. The total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal and allowing this appeal.

10.The learned counsel appearing for the 1st respondent made his submissions in support of the award passed by the Tribunal.

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

12.It is the contention of the 1st respondent that while he was travelling as a pillion rider in the motorcycle belonging to the 2nd respondent, the rider of the motorcycle rode the motorcycle in a rash and negligent manner and while trying to overtake a bus, handle bar of the motorcycle hit the right side of the Government bus and caused the accident. To substantiate this contention, the 1st respondent examined himself as P.W.1 and marked F.I.R. as Ex.P1. According to the appellant, the accident has occurred only due to rash and negligent driving by the driver of the Government bus and relied on the contents of F.I.R. and Accident Register. F.I.R. was registered based on the complaint given by one Shanthi. The appellant has not examined the said Shanthi or any eye-witness or the Doctor who recorded the Accident Register. The contents of the F.I.R. is not the sole criteria for fixing the negligence. The Tribunal has to consider the evidence let in before it to give a finding with regard to negligence. F.I.R. can be considered along with other evidence let in before the Tribunal. The Tribunal has to give more importance to the evidence given on oath. In the present case, the Tribunal has considered the evidence of P.W.1,

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Ex.P1/F.I.R. and Ex.P2/rough sketch and in the absence of contra evidence by the appellant, held that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as policy is concerned, it is the contention of the appellant that the policy was cancelled on the date of accident due to return of cheque issued for premium amount. According to the appellant, they intimated the cancellation of policy to the concerned R.T.O. and owner of the vehicle, the 2nd respondent. From the award of the Tribunal, it is seen that the policy issued by the appellant is for the period from 08.06.2010 to 07.06.2011. The accident has occurred on 11.08.2010. The cheque issued by the 2nd respondent was dishonoured and returned by the drawee bank on 20.06.2010 for want of funds. The Tribunal considering Ex.R3/Copy of intimation sent to RTO held that the intimation was given only on 05.01.2011 and notice was not given to the 2nd respondent, owner of the vehicle as well as R.T.O. before the date of accident, held that the appellant is liable to pay the compensation to the 1st respondent. The contention of the learned counsel appearing for the appellant that the policy was not in force on the date of accident and cancellation of policy was intimated is contrary to the materials on record and hence, there is no need to interfere with the award of the Tribunal.

14.As far as quantum of compensation is concerned, the 1st respondent has contended that he was working as a lorry driver and was earning a sum of Rs.300/- per day. In the accident, he sustained fracture of both right and left hip, pubic ramy superior and interior of pelvis, fracture of right femur above knee and injury over left leg. The appellant has taken treatment as in-patient in Government Stanley Hospital, Chennai, from 11.08.2010 to 25.08.2010. Due to the injuries and fracture, he could not continue his avocation as lorry driver. The 1st respondent as P.W.1 deposed about the nature of injuries and treatment taken. The 1st respondent has also examined P.W.2/Doctor who deposed about the nature of injuries and treatment taken by the 1st respondent. P.W.2/Doctor assessed that the appellant suffered 50% disability. The Tribunal considering the materials on record, evidence of P.W.2/Doctor and medical records, held that due to the injuries, the 1st respondent cannot continue his work as he was doing earlier, fixed 20% as functional disability and granted compensation by adopting multiplier method. In the absence of any material evidence to prove the income, the Tribunal fixed a sum of Rs.5,000/- as notional income of the appellant. The accident is of the year 2010. The monthly income fixed by the Tribunal is not excessive. The 1st respondent was aged 27 years at the time of accident. The

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correct multiplier applicable is 17. The Tribunal applied multiplier 18. In view of the meagre amounts granted by the Tribunal towards transportation, extra nourishment, attendant charges and no amount granted towards loss of amenities, the multiplier applied 18 by the Tribunal instead of 17 is not interfered with. The total compensation awarded by the Tribunal is not excessive and the same is hereby confirmed.

15.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.3,02,700/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 2nd respondent. On such deposit, the 1st respondent is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To
1.IV Judge
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

Copy to :
The Section Officer
VR Section
High Court Madras.

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