

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.03.2020
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.129 of 2017
and CMP No.902 of 2017

United India Insurance Company Ltd.,
Divisional Office - 1,
104-A, Peramanur Main Road,
Salem - 636 007.

... Appellant /
2nd Respondent

Vs.

1. Venkatasen

...1st respondent/
Petitioner

2. Ponnusamy

...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 29.08.2016 made in M.C.O.P.No.2072 of 2013 on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.1), Salem.

For Appellant : Mr.D.Bhaskaran

For 1st Respondent : No appearance

For R2 : Exparte before Tribunal

J U D G M E N T

This appeal is preferred by the Insurance company questioning the negligence and grant of compensation of Rs.6,65,500/- to the claimant in MCOP.No.2072 of 2013.

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

On 27.10.2013, at about 15.30 hrs, the first respondent/claimant was riding the Hero Honda Super Splendor motorcycle bearing Registration No.TN30 L 8682, in a slow and cautious manner following all the traffic rules, from Omalur to Salem. At that time, a TATA INDICA CAR bearing registration No.TN29 T 9760 belonging to the second respondent and insured with the appellant insurance company, which was going in front of the said motorcycle, was suddenly stopped, without giving any signal. Due to the said impact, the first respondent/claimant hit the right side of the Car and sustained grievous injuries.

Stating that the accident had occurred, due to the rash and negligent driving of the driver of the car, he filed a claim petition, claiming a compensation of Rs.10,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the car and awarded a total compensation of Rs.6,65,500/- with interest at 7.5% per annum from the date of petition. Aggrieved over the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company has submitted that the first respondent / claimant / rider of the motorcycle himself hit the car from behind and sustained injuries and thereby invited the accident; there was a delay in lodging the complaint; and the Investigating Officer, after having concluded that the first respondent / claimant was responsible for the accident, closed the case in RC No.88 of 2013 as 'mistake of fact' registered against the driver of the car. Without considering those aspects in a proper perspective, the Tribunal has erred in holding that the accident had occurred only due to the rash and negligent driving of the driver of the car. The learned counsel further submitted that the total compensation of Rs.6,65,500/- awarded by the Tribunal under various heads is highly excessive, exorbitant and without any basis and hence, the same has to be reduced to some extent.

4.Despite service of notice and the name of the first respondent having been printed in the cause list, there is no representation on his behalf.

5.This Court has given its anxious consideration to the submissions made by the learned counsel for the appellant and carefully perused the materials available on record.

6.To succeed in the claim petition in view of Section 166 of the Motor Vehicles Act, it is for the first respondent / claimant to prove that vehicle which caused the accident was being driven rashly and negligently by its driver. Accordingly, he examined himself as P.W.1 and it is his evidence that on the date of accident, he was riding the Hero Honda Super Splendor Motor Cycle bearing Registration No.TN 30 L-8682, from Omalur to Salem on the left side of the road; at that time, the TATA INDICA Car bearing registration No.TN 29 T 9760 belonging to the second respondent and insured with the appellant Insurance company, which was going in front of his motorcycle in a rash and negligent manner, was suddenly stopped, without giving any signal; due to which, the first respondent/claimant hit the car, despite best efforts taken by him to avoid the accident; as a result of the same, he sustained severe injuries all over the

body. His evidence was corroborated by Ex.P1-First Information Report.

7.The learned counsel for the appellant insurance company has questioned the finding of the Tribunal on negligence, contending that the first respondent/claimant himself hit the car from behind and thereby invited the accident; the complaint was lodged belatedly; and the FIR registered against the driver of the car, was closed as mistake of fact; and hence, there was no negligence on the part of the driver of the car insured with the appellant insurance company and the accident was caused only due to the fault on the part of the first respondent/claimant.

8.The Tribunal, after having taken note of the various decisions rendered by the Supreme Court as well as this Court, has answered the grounds raised on the side of the appellant to the effect that the delay in lodging FIR cannot be a ground to doubt the claimant's case; the Court could not and should not simply substitute its conclusion by the conclusion of the police in their final report and the Tribunal must render its decision based on the legal evidence adduced before it; and the claimant need not prove his case beyond reasonable doubt, but establish the same, through preponderance of probability; and ultimately, held that the accident had occurred only due to the rash and negligent driving of the driver of the car insured with the appellant insurance company.

9.A perusal of the award would reveal that no concrete evidence was produced on the side of the appellant insurance company to deny the claim of the petitioner; and to prove as to how the accident occurred due to the negligence of the petitioner and the driver of the second respondent car was not at fault and was not driving the vehicle in rash and negligent manner. Though RW2 - Administrative officer of the insurance company was examined, he was not eye witness to the occurrence and hence, his evidence was rightly rejected by the Tribunal. Further, the driver of the car was not examined to narrate the manner of accident; and the closure report was also not served on the first respondent/ claimant. On the other hand, the testimony of P.W1/first respondent/claimant was in line with Ex.P1 / First Information Report. It is well settled that the provision of Motor Vehicles Act being a benevolent social legislation enacted with a view to giving relief to the victim of a vehicular accident, the claimant is not required to prove its case beyond all reasonable doubts and the claim can be decided on the basis of strong reasonable probability and preponderance of evidence. As such, this Court finds no good reason to differ with the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the car insured with the appellant insurance

company and hence, the same is affirmed.

10. Since there is no dispute with regard to the liability of the insurance company to pay compensation to the claimant, the same is confirmed as such.

11. With respect to grant of compensation, the learned counsel for the appellant submitted that without any proof, the Tribunal has awarded an exorbitant sum of Rs.6,65,500/- towards compensation to the first respondent/claimant and hence, the same warrants interference in the hands of this Court.

12. At the outset, it would be profitable to extract the observation of the Supreme Court in (2011) 1 SCC 343 titled Raj Kumar v. Ajay Kumar and another, relating to general principles for compensation in injury cases, which read as under:

"The provision of the Motor Vehicles Act, 1988 (Act for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court of tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned."

13. To bear in mind the aforesaid observation, this Court is inclined to ascertain, whether the compensation awarded by the Tribunal is just and proper. The first respondent/claimant as P.W.1 deposed in his evidence that he was aged 38 years and was earning Rs.25,000/- by doing Timber, Plywood & Hardware Business and an Income Tax Assessee; in the accident, he sustained fracture in left femur, besides receiving head injury and lacerated wounds; he has taken treatment as inpatient from 27.10.2013 to 04.11.2013 in Ganga Hospital, Coimbatore; operation was done and steel plates were implanted, for which, he spent Rs.2,00,000/- and he has been taking treatment

continuously; due to head injury, he always feels giddiness and vomiting and he could not do any work without the help of others. P.W.2/doctor has deposed about the nature of the injuries sustained by the first respondent/claimant. Ex.P3 is discharge summary, Ex.P4 is medical bill series, Ex.P5 is income tax returns, Ex.P6 is X-ray, Ex.P7 is disability certificate at 43% and Ex.P8 is the receipt for X-ray.

14.After considering the oral and documentary evidence available on record, the Tribunal has awarded a sum of Rs.1,29,000/- by fixing Rs.3,000/- per percentage for 43% permanent disability, which in the opinion of this Court, seems to be just and reasonable and hence, warrants no interference.

15.However, the sum of Rs.1,20,000/- (Rs.10,000/- x 12 months) awarded by the Tribunal, towards loss of income during treatment period is excessive and exorbitant, in the absence of any records to that effect and hence, the same is hereby reduced to Rs.40,000/-. Similarly, the award of Rs.50,000/- towards future medical expenses, Rs.75,000/- towards pain and suffering and Rs.75,000/- towards loss of amenities and enjoyment of life, are on the higher side and hence, the same are hereby reduced to Rs.25,000/-, Rs.50,000/- and Rs.50,000/- respectively, having regard to the facts and circumstances of the case.

16.That apart, the Tribunal has awarded Rs.1,70,500/- towards medical charges, which is the actual expenses incurred for the treatment taken by the first respondent/claimant due to the accident and hence, the same does not require any interference by this Court. Similarly, the sum of Rs.10,000/-, Rs.10,000/-, Rs.25,000/- and Rs.1,000/- awarded by the Tribunal towards transport expenses, extra nourishment, attender charges and damage to clothes respectively, are just and reasonable and hence, the same are confirmed as such. Further, there is no modification with respect to rate of interest at 7.5%pa awarded by the Tribunal. Thus, the total compensation awarded by the Tribunal is modified to Rs.5,10,500/- from Rs.6,65,500/-, the details of which are as follows:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Permanent disability	1,29,000/-	1,29,000/-
Pain and suffering	75,000/-	50,000/-
Loss of Amenities and Enjoyment of life	75,000/-	50,000/-
Loss of income during treatment period	1,20,000/-	40,000/-
Medical expenses	1,70,500/-	1,70,500/-

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Attendant charges	25,000/-	25,000/-
Extra nourishment	10,000/-	10,000/-
Transportation	10,000/-	10,000/-
Damages of clothes	1,000/-	1,000/-
Future medical expenses	50,000/-	25,000/-
Total	6,65,500/-	5,10,500/-

17. In fine, this appeal is partly allowed. The appellant Insurance Company is directed to deposit the aforesaid modified compensation amount with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the Tribunal shall transfer the amount lying in the deposit to the bank account of the first respondent/claimant through RTGS within a period of one week thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

av/rk

To

1. The Motor Accidents Claims Tribunal,
The Special Sub Court No.1,
Salem.

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

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 19682

C.M.A.No.129 of 2017
and CMP No.902 of 2017

RSI (CO)
GN (08/02/2021)