IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1589 of 2017
and C.M.P.No.8386 of 2017

The New India Assurance Company Ltd.
Near Govt.Girls High School
Thiruvika Street, Villupuram. ... Appellant/2nd Respondent

Vs

1.Mahesh ... 1st Respondent/ Petitioner

2.S.Kumar ... 2nd Respondent/ 1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 24.03.2015 made in MCOP No.214 of 2010 on the file of the Motor Accidents Claims Tribunal (I Additional Subordinate Judge), Villupuram.

For Appellant : Mr.G.Udaya Sankar

For Respondents : No appearance for R1

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award of a sum of Rs.1,13,000/- towards compensation to the first respondent due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:
On 14.07.2009 at about 10.30 a.m., the first respondent was riding his friend's motorcycle bearing Reg.No.TN-22-AF-6075, from Sethur towards Thiruvennainallur on the Thiruvennainallur – Enathimangalam Road, for paying the electricity bill. When he reached near Siruvanur Colony Bus Stop, another two-wheeler bearing Reg.No.TN-32-A-7763 (Bajaj Boxer), belonging to the second respondent and insured with the appellant Insurance Company, came from the opposite direction in a rash and

negligent manner and dashed against the motorcycle which the first respondent was riding. Due to the said impact, the first respondent sustained grievous injuries. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,13,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company has submitted that the Tribunal went wrong in making the appellant liable to pay the compensation and recover the same from the owner of the vehicle, when the fact remained that the oral and documentary evidence placed before the Tribunal clearly establishes that the first and second respondents, ie., the injured claimant and the owner of the two-wheeler bearing Reg.No.TN-32-A-7763 have colluded by manipulating the Motor Cover Note in respect of the period of insurance as 13.05.2008 to 12.09.2009 in order to cover the date of accident, viz. 14.07.2009. On the other hand, it is submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.There is no representation for the first respondent / claimant. However, considering the paucity of time, this Court is inclined to dispose of this appeal, on merits.

6.Heard the learned counsel for the appellant and perused the materials available on record carefully.

7.With regard to the quantum of compensation, the Tribunal has relied upon the exhibits, evidence of witnesses, treatment records 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.

8.With regard to the contention raised by the learned counsel for the appellant as to the manipulation of the motor cover note in order to cover the date of accident, the Tribunal has observed that initially it was accepted on the side of the Insurance Company that the two-wheeler belonging to the second respondent has been insured with them, but thereafter they have taken a stand that both the injured and the second respondent herein have colluded with each other. Further Ex.P7-Insurance

Policy has been filed on behalf of the Insurance Company before the Tribunal, which states that the said two-wheeler was insured with them on the date of accident, ie., on 14.07.2009. Further, no documents have been filed on the side of the Insurance Company to show that the motor cover note filed by the claimant does not belong to the said vehicle. However, taking note of the fact that on the date of accident, the insurance coverage for the said vehicle was pending, the Tribunal directed the appellant Insurance Company to pay the compensation to the claimant and thereafter recover the same from the owner of the vehicle, the second respondent herein. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

9.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting 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. Thereafter, the appellant-Insurance Company shall proceed against the owner of the vehicle, the second respondent herein, for recovery of the compensation amount.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KM

To

1.The I Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Villupuram.

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

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