IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2020

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.300 of 2017
&
CMP.No.2190 of 2017

The New India Assurance Co., Limited.,
No.87, M.G.Road Fort,
Mumbai - 400 001.
.... Appellant/2nd Respondent

Vs.

1. Uthuraj ...1st Respondent/Claimant
2. Mannam Vasudevendra Rao ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 12.01.2016 made in MCOP No.1133 of 2014 on the file of the Learned Motor Accident Claims Tribunal, Special (Subordinate - Judge), at Dharmapuri - District.

For Appellant : Mr.J.Chandran

For R-1 : Mr.N.Chinnaraj

For R-2 : No appearance

J U D G M E N T

This appeal is preferred by the appellant Insurance Company against the award of a sum of Rs.1,35,000/- towards compensation to the first respondent, due to the injuries suffered by him in a motor vehicle accident.

2. The case in brief, is as follows:-

On the fateful day, i.e., on 05.05.2013 at about 2.35 p.m., when the first respondent/claimant was riding TVS SUZUKI bearing Registration No.TN 30 X - 5069 from Thoppur to Ramadas Nagar, Dharmapuri District, near Commercial Check Post, the lorry bearing Registration No.AP-27-Y-7957, belonging to the second respondent and insured with the appellant Insurance Company, proceeded on the extreme left side of the road in a rash and negligent manner, and the driver of the lorry applied a sudden brake, without any indication. Due to the same, the two-wheeler which was driven by the first respondent/claimant following the lorry, dashed on the back side of the lorry. Due to the said impact, the first respondent sustained grievous injuries. He filed a claim petition before the Tribunal seeking compensation of a sum of Rs.5,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,35,000/- with interest at the rate of 7.5% per annum from the date of petition. The said sum has been directed to be paid by the owner of the vehicle and the Insurance Company, jointly and severally. Challenging 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 rider of the two wheeler had also contributed to the accident and hence fastening the liability by the Tribunal on the appellant alone is erroneous. He further submitted that the Tribunal has failed to note that the driver of the lorry which was insured with the appellant was not having valid driving license at the time of accident. He also submitted that in any event, the award of the Tribunal is disproportionate and it needs significant reduction.

4.Per contra, the learned counsel appearing for the first respondent/claimant has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference in the hands of this Court.

5.Heard the submissions made by the learned counsel on either side and perused the materials available on record.

6.A perusal of the award of the Tribunal would reveal that Ex.P1-First Information Report was registered against the driver of the lorry bearing Registration No.AP-27-Y-7957 stating that he was responsible for the accident, which corroborates with the evidence of P.W.1/ claimant. As per Ex.P4 -Insurance policy, it covers the risk of the offending vehicle. Placing reliance on those materials and evidence, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent act on the part of the driver of the lorry insured with the appellant insurance company and accordingly fixed the liability on the Appellant Insurance Company. This Court is of the opinion that while coming to such conclusion, the Tribunal failed to note that the driver of the lorry was not possessing valid driving licence at the time of accident. In such circumstances, the Tribunal ought to have permitted the appellant Insurance Company to pay the compensation to the claimant and thereafter, recover the same from the owner of the vehicle, as there was a breach of policy conditions, by not possessing the valid driving license by the driver of the lorry. Accordingly, in respect of liability, the judgment passed by the Tribunal directing both the owner of the vehicle and the Insurance Company to pay the compensation jointly and severally, is modified to the effect that the Insurance Company, shall, at the first instance, pay the compensation to the claimant and thereafter recover the same from the owner of the vehicle.

7.As regards the quantum of compensation awarded by the Tribunal, the first respondent/claimant himself has been examined as P.W.1, who deposed that he was aged 31 years and was earning Rs.8,000/- as a Lorry driver. However, no authenticated document was filed to prove the same. P.W.2/Doctor, who examined the claimant, deposed in his evidence that the first respondent/claimant sustained grievous and multiple injuries and all over the body. After assessing the first respondent/claimant, the Doctor issued permanent disability stating that the first respondent sustained 20% disability. A perusal of Ex.P3-Discharge summary, also reveals that the first respondent/claimant sustained multiple injuries.

8.The Tribunal has awarded a sum of Rs.60,000/- towards 20% disability at the rate of Rs.3,000/- per percentage of disability. Considering the injuries sustained by the claimant, it would be appropriate to award only Rs.2,000/- per percentage of disability. If that is done, the amount towards disability works out to Rs.40,000/- and accordingly it is modified. Further, it would be appropriate to reduce the compensation awarded by the Tribunal towards pain and suffering from Rs.20,000/- to Rs.15,000/- and towards mental agony and loss of comfort from Rs.20,000/- to Rs.10,000/-. The amounts awarded towards loss of earning during the treatment period, medical expenses, transportation expenses, extra nourishment and damages to articles at Rs.10,000/-, Rs.10,000/-, Rs.5,000/- and Rs.10,000/- respectively, are confirmed. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Permanent disability (20%)	40,000/-
Pain and suffering	15,000/-
Mental agony and loss of comfort	10,000/-
Loss of earning during treatment period	10,000/-
Medical expenses	10,000/-
Transportation expenses	5,000/-
Extra nourishment and damages to articles	10,000/-
TOTAL....	1,00,000/-

Thus, the compensation awarded by the Tribunal stands reduced to Rs.1,00,000/- with interest at the rate of 7.5% per annum from the date of petition.

9. The appellant Insurance Company is directed to deposit the modified compensation amount as ordered above, 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 and thereafter, recover the same from the owner of the vehicle, in accordance with law. On such deposit being made, the first respondent / claimant is permitted to withdraw the same on making proper application before the Tribunal.

10.Accordingly, this Civil Miscellaneous Appeal is allowed in part. No costs. Consequently the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The learned Special (Subordinate - Judge),
The Motor Accident Claims Tribunal,
Dharmapuri District.

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

C.M.A.No.300 of 2017 & CMP.No.2190 of 2017

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srg 29/04/2021