IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MADHADEVAN

C.M.A.No.97 of 2017

M/s. United India Insurance Company Ltd.,
Branch Office -3, 137-T,
Cherry Road, Salem - 636 001. ... Appellant/2nd Respondent

vs.

1. P.Panneerselvam
2. N.Ramesh ... Respondents/Petitioner/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.08.2016 made in M.C.O.P.No.376/2012 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1), Salem.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.S.P.Yuaraj

For R2 : Mr.N.Ramesh

JUDGMENT

This appeal is preferred by the appellant Insurance Company against the award of a sum of Rs.2,98,000/- towards compensation to the first respondent/claimant, due to the injuries suffered by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 02.07.2013, at about 22.30 hours, the first respondent/claimant was riding the TVS XL Super motorcycle bearing Registration No.TN 30 AK 4657, on the Kannankurichi Main Road, Chinamuniappan Temple near Chinnathirupathi Agriculture Co-operative Bank. At that time, the goods carrier auto bearing Registration No.TN-30-J-7475 belonging to the second respondent and insured with the appellant insurance company, came in a rash and negligent manner, without giving any signal and turned towards right side suddenly and hit the motorcycle from behind. As a result of the same, the first respondent sustained grievous injuries, for which, he filed a claim petition seeking compensation of Rs.3,00,000/- before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the auto and awarded a total compensation of Rs.2,98,000/- 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 was also responsible for the accident and he was a tort-feasor and hence, the Tribunal ought to have fixed contributory negligence on him as well. He further submitted that the Investigating Officer, after having concluded that the first respondent / claimant was responsible for the accident, closed the case in Cr.No.463 of 2011 as 'mistake of fact' registered against the driver of the goods auto. Without considering those aspects, the Tribunal has held that the accident had occurred only due to the rash and negligent driving of the driver of the goods auto, which is not correct. The learned counsel also submitted that the total compensation of Rs.2,98,000/- awarded by the Tribunal under various heads is highly excessive, exorbitant and without any basis and hence, the same has to be reduced substantially.

4.Per contra, the learned counsel for the first respondent / claimant has submitted that after properly analysing the materials and evidence, the Tribunal has awarded the just and reasonable compensation and has correctly fixed the negligence on the part of the driver of the auto and hence the impugned judgment does not require any interference in the hands of this Court.

5.Heard the learned counsel on either side and 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 the 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 TVS XL Super motorcycle bearing Registration No.TN 30 AK 4657, at Kannankurichi Main Road, Chinnamuniappan Temple near Chinnathirupathi Agriculture Co-operative Bank; at that time, the goods carrier auto bearing Registration No.TN-30-J-7475 belonging to the second respondent and insured with the appellant insurance company, came in a rash and negligent manner and without giving any signal and turned towards right side suddenly, due to which, the goods auto hit the motorcycle from behind and 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 was the tort-feasor and invited the accident; and the FIR registered against the driver of the goods auto, was closed as mistake of fact; and hence, there was no negligence on the part of the driver of the goods auto 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 taking 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 FIR cannot be a ground to doubt the claimant's case; the Court could not and should not simply substitute its finding based on 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 probabilities; and ultimately, held that the accident had occurred only due to the rash and negligent driving of the driver of the goods auto 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 claimant and to prove that the accident had occurred due to the negligence of the claimant and to further prove that the driver of the second respondent auto was not at fault and was not driving the vehicle in a rash and negligent manner. Further, the driver of the auto 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 Vehicle 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 his case beyond all reasonable doubts and the claim can be decided on the basis of strong reasonable probabilities 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 goods auto insured with the appellant insurance company and hence, the same is affirmed.

10.With respect to the grant of compensation, the first respondent/claimant as P.W.1 deposed in his evidence that he was aged 31 years and was earning Rs.8,000/- as a coolie; in the accident, he sustained fracture on right leg and multiple injuries all over the body. P.W.2/doctor has deposed about the nature of the injuries sustained by the first respondent/claimant. Ex.P2 is discharge summary, Ex.P4 are the medical bill series, Ex.P6 is the disability certificate at 35% and Ex.P8 is the X-ray. After considering the oral and documentary evidence available on record, the Tribunal has awarded a sum of Rs.1,05,000/- by fixing Rs.3,000/- per percentage for 35% permanent disability, which in the opinion of this Court, seems to be just and reasonable and hence, the same warrants no interference. That apart, the Tribunal has awarded Rs.29,000/- towards medical expenses, 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.

11.However, the sum of Rs.48,000/- (Rs.6,000/- x 8 months) awarded by the Tribunal, towards loss of income during treatment period is excessive and exorbitant, in the absence of any record to that effect. Taking note of the claim made in the claim petition that the first respondent was a labourer in construction work and the period of treatment undergone by him, it would be appropriate to award a sum of Rs.10,000/- towards this head, instead of Rs.48,000/-. Similarly, the award of Rs.50,000/- towards pain and suffering, Rs.15,000/- towards attender charges and Rs.40,000/- towards loss of Amenities and Enjoyment of life, are on the higher side and hence, the same are hereby reduced to Rs.10,000/-, Rs.5,000/- and Rs.10,000/- respectively, having regard to the facts and circumstances of the case.

12.The amounts awarded by the Tribunal at Rs.5,000/-, Rs.1,000/- and Rs.5,000/- towards extra nourishment, damage to clothes and transport expenses respectively, are just and reasonable and hence, the same are confirmed. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Permanent Disability	1,05,000/-
Pain and suffering	10,000/-
Medical expenses	29,000/-
Extra nourishment	5,000/-
Attender charges	5,000/-
Loss of Amenities and Enjoyment of Life	10,000/-
Damage to clothes	1,000/-
Transportation	5,000/-

Loss of income during treatment period	10,000/-
TOTAL....	1,80,000/-

Thus, the compensation awarded by the Tribunal stands reduced to Rs.1,80,000/- with interest at the rate of 7.5% per annum from the date of petition.

13. In fine, this appeal is partly allowed. No costs. It is submitted by the learned counsel for the appellant/ insurance company that as directed by this Court, the appellant insurance company has deposited the entire award amount along with proportionate interest and costs; and the first respondent has also withdrawn 25% of the award amount. In view of the same, the first respondent /claimant is permitted to withdraw the aforesaid modified compensation amount along with interest and costs, after deducting the amount already withdrawn, on making proper application before the Tribunal. The appellant insurance company is also permitted to withdraw the balance amount lying in the deposit.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

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

Copy To

The Section Officer,
V.R.Section,
Madras High Court,
Chennai 104. (2 Copies)

C.M.A.No.97 of 2017

RR(CO)
GN(24/08/2021)