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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.282 of 2021
and C.M.P.No.1874 of 2021

The Branch Manager
Reliance General Insurance Company Limited
Dhanam Towers, 1st floor, No.1
Binny main road, Park road street
Tiruppur - 641 601. ... Appellant / 2nd Respondent

Vs.

1.Yasodha ... 1st Respondent / Petitioner
2.V.Mahendran ... 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 14.07.2020 made in M.C.O.P.No.2383 of 2017 on the file of Motor Accident Claims Tribunal, Principal District Court, Tiruppur.

For Appellant : Mrs.C.Bhuvanasundari

For R1 : Mr.K.Myilsamy (caveator)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company to set aside the award dated 14.07.2020 made in M.C.O.P.No.2383 of 2017 on the file of Motor Accident Claims Tribunal, Principal District Court, Tiruppur.

2.By consent of both the learned counsel appearing for the appellant and the learned counsel appearing for the 1st respondent, the appeal is taken up for final disposal at the



stage of admission itself.

3.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.2383 of 2017 on the file of Motor Accident Claims Tribunal, Principal District Court, Tiruppur. The 1st respondent filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by her in the accident that took place on 16.10.2017.

4.According to the 1st respondent, on the date of accident i.e., on 16.10.2017 at about 11.00 hours, while the 2nd respondent, husband of the 1st respondent, was riding the motorcycle along with the 1st respondent as a pillion rider in Hero Splendor plus drum motorcycle on Tirupur to Dharapuram Road, near N.Kanchipuram bridge, the 2nd respondent rode the motorcycle in a rash and negligent manner, lost his control, dashed on the bridge and caused the accident. Due to the said impact, the 1st respondent was thrown away and 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.

5.The 2nd respondent, rider-cum-owner of the motorcycle, remained exparte before the Tribunal.

6.The appellant/Insurance Company insurer of the said motorcycle filed counter statement denying the averments made by the 1st respondent and stated that the appellant has not received any information about the accident from the 2nd respondent. The accident occurred on 16.10.2017. F.I.R. was lodged on 03.11.2017. The reason for delay in lodging complaint is not explained by the 1st respondent. The 1st respondent alone has to prove that the rider of the motorcycle possessed valid driving license to ride the motorcycle. The 1st respondent did not wear helmet at the time of accident. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent. The appellant/Insurance Company has also denied the age, avocation, income and nature of injuries sustained by the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent examined herself as P.W.1, one Aarathal, co-worker of the 1st respondent was



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examined as P.W.2 and five documents were marked as Exs.P1 to P5. The appellant/Insurance Company did not let in any oral and documentary evidence. The disability certificate issued by the Medical Board was marked as Ex.C1.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 2nd respondent, rider-cum-owner of the motorcycle and directed the appellant/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.7,95,175/- as compensation to the 1st respondent.

9.To set aside the said award dated 14.07.2020 made in M.C.O.P.No.2383 of 2017, the appellant/Insurance Company has come out with the present appeal.

10.The learned counsel appearing for the appellant/Insurance Company contended that the respondents 1 and 2 are wife and husband respectively. The 1st respondent initially informed the hospital authorities not to inform the Police about the accident and stated that only for claiming compensation, she lodged the complaint on the advise of her relative. The 1st respondent has not filed Motor Vehicle Inspector's report and rough sketch. The accident has not occurred as alleged by the 1st respondent. The 1st respondent has failed to prove the involvement of the motorcycle belonging to the 2nd respondent in the accident and the accident has occurred by letting in documentary evidence. The Tribunal ought to have dismissed the claim petition. In any event, the compensation awarded by the Tribunal by adopting multiplier method is not correct. The 1st respondent has not proved her employment and subsequent dismissal from service due to the disability. The Tribunal failed to note that fracture of clavicle is a partial permanent disability and is not a permanent disability. The Tribunal ought to have adopted percentage method for granting compensation and prayed for setting aside the award of the Tribunal.

11.Per contra, the learned counsel appearing for the 1st respondent/caveator contended that due to the accident, the 1st respondent suffered functional disability and lost her earning capacity. Therefore, the Tribunal rightly adopted multiplier method and awarded compensation. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the



appeal.

12. Heard through "Video-conferencing" the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent/caveator and perused the entire materials on record.

13. It is the case of the 1st respondent that while she was travelling as a pillion rider in the motorcycle driven by the 2nd respondent, the 2nd respondent dashed the motorcycle on the bridge and thus, the accident occurred. In the accident, the 1st respondent sustained injuries and fracture. To substantiate the said contention, she examined herself as P.W.1 and marked F.I.R., which was registered against the 2nd respondent as Ex.P1. On the other hand, it is the case of the appellant that complaint was given after 19 days of the accident and the 1st respondent has not explained the delay in filing the complaint. The 1st respondent in her evidence admitted that she has given complaint only for claiming compensation based on the advise of her relative. The 1st respondent suffered injuries elsewhere and the accident has not occurred as alleged by her. The appellant/Insurance Company has not let in any evidence in support of their case. The 1st respondent has deposed that the complaint was not lodged immediately after the accident as her husband has caused the accident. The explanation given by the 1st respondent for the delay is acceptable. It is not the case of the appellant that the vehicle of the 2nd respondent is not insured with them and the pillion rider is not covered under policy. The Tribunal considering the pleadings, oral and documentary evidence and in the absence of any evidence let in by the appellant, held that the accident has occurred only due to rash and negligent riding by the 2nd respondent, his motorcycle is involved in the accident, the 1st respondent suffered injuries in the accident and as the insurer of the said motorcycle, the appellant/Insurance Company is liable to pay compensation to the 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

14. As far as quantum of compensation is concerned, it is the case of the 1st respondent that she was working as a checking worker in CBC Fashion Company and was earning a sum of Rs.8,125/- per month. In the accident, she suffered fractures in



right shoulder, right foot, injuries on head and right hand. Due to the injuries, she could not move the right hand and do the work as she was doing earlier. The Tribunal considering the injuries, treatment taken, disability, nature of work and in the absence of any evidence on the part of the appellant with regard to disability and work of the 1st respondent, accepted the evidence of the 1st respondent as P.W.1, adopted multiplier method and granted compensation towards loss of income. The 1st respondent suffered 52% disability. The accident is of the year 2017 and the monthly income fixed by the Tribunal at Rs.6,000/- is meagre. In view of the same, the multiplier method adopted by the Tribunal is not interfered with. The amounts awarded by the Tribunal under different heads are not excessive warranting interference by this Court.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.7,95,175/- 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 award amount 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. On such deposit, the 1st respondent is permitted to withdraw the entire 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-III)

//True Copy//

Sub Assistant Registrar

kj

To

1.The Principal District Judge
Motor Accident Claims Tribunal
Tiruppur.



Copy To:

The Section Officer
VR Section
High Court
Madras.

+1cc to Mr.K.Myilsamy, Advocate, S.R.No.8944

C.M.A.No.282 of 2021
and C.M.P.No.1874 of 2021

AJS(CO)
SB(14/09/2021)