IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.2390 OF 2015 &
M.P.NO.1 OF 2015

The Branch Manager,
United India Insurance Co. Ltd.,
Ranipet ...Appellant / 2nd Respondent

Vs

1.Devaraj ...1st Respondent / Petitioner

2.Durairaj ...2nd Respondent / 1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Judgment and Decree dated 13.06.2014 made in MCOP.No.68 of 2012 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Cheyyar.

For Appellant : Ms.Rathna Thara

For Respondent : Mr.S.Mathesh

Not ready in notice regarding R2.

JUDGMENT
(This case is heard through Video Conferencing)

This civil miscellaneous appeal has been filed by the Insurance company challenging the award dated 13.06.2014 passed by the Motor Accident Claims Tribunal (Subordinate Judge, Cheyyar) in MCOP.No.68 of 2012.

2. The Appellant Insurance Company has challenged the impugned award on the following grounds (a) the first respondent/claimant himself is a tortfeasor as the accident had

happened while he was boarding the bus (insured vehicle) and (b) the quantum of compensation awarded by the Tribunal is excessive, since the Tribunal has erroneously adopted the multiplier method for assessing the compensation.

3. The Tribunal has awarded a compensation of Rs.12,68,000/- to the first respondent/claimant as detailed hereunder:

Heads	Award Amount (Rs.)
Transport to hospital	10,000/-
Extra nourishment	20,000/-
Pain and suffering	50,000/-
Permanent disability	11,88,000/-
Total	12,68,000/-

4. With regard to the first contention raised by the Appellant is concerned, this Court rejects the same for the following reasons:

(a) It is the case of the first respondent/claimant as seen from the claim petition filed before the Tribunal that while attempting to board the bus (insured vehicle) at the bus stop and even before he could board the bus, the driver of the bus by his rash and negligent driving moved the bus which resulted in him falling down and sustaining injuries. A consistent stand has been taken by the first respondent/claimant as seen from his pleading as well as from his deposition before the Tribunal. No contra evidence has been produced by the Appellant insurance Company to disprove the said contention.

(b) FIR (Ex.P1) has also been registered only against the driver of the bus (insured vehicle). No contra evidence has been produced by the Appellant Insurance Company before the Tribunal to disprove the contention of the first respondent/claimant.

5. This Court is of the considered view that the Tribunal was right in holding the driver of the insured bus alone responsible for the cause of the accident which resulted in the first respondent/claimant sustaining injuries.

6. With regard to the second contention namely the quantum of compensation awarded by the Tribunal to the first respondent/claimant is excessive is concerned, there is some substance. However, the same will have to be re-adjudicated once again by the Tribunal for the following reasons:

(a) The first respondent/claimant in his claim petition has claimed a compensation of Rs.4,50,000/-, whereas the Tribunal has awarded a compensation of Rs.12,68,000/- under the impugned award. Though the same is permissible under law, the Tribunal ought to have given reasons for awarding such a huge sum, despite the fact that the first respondent/claimant has himself claimed only R.4,50,000/-

(b) The permanent disability of the first respondent/claimant has been fixed at 60% by the Tribunal under the impugned award based on the certificate issued by the medical board which has been marked as Ex.P10 as well as the certificate issued by the Doctor which has been marked as Ex.P18 before the Tribunal. The disability certificate issued by the medical board (Ex.P10) does not refer to the fractures sustained by the first respondent/claimant as a result of the accident, but it refers to other ailments. Whether 60% disability assessed by the medical board (Ex.P10) and the disability certificate issued by the Doctor (Ex.P18) is only on account of the injuries sustained by the first respondent/claimant as a result of the accident caused by a vehicle insured with the Appellant has not been considered by the Tribunal as seen from the impugned award. The contention of the Appellant Insurance Company is that the assessment of the disability by the medical board as well as the doctor is an erroneous assessment.

(c) The Appellant insurance company has also raised the contention that the first respondent/claimant is a chronic smoker and an alcohol consumer as seen from Ex.P4 and Ex.P7 discharge summaries issued by Miot Hospitals. The Tribunal has also not taken into consideration the said contention of the Appellant Insurance Company as seen from the impugned Award.

(d) Tt is brought to the notice of this Court that 50% of the award amount has already been deposited by the Appellant Insurance company before the Tribunal and out of the said deposited amount, a sum of Rs.4,00,000/- was permitted to be withdrawn by the first respondent/claimant by the order of this Court.

7. Since the contention of the Appellant insurance company which have been raised in this appeal referred to supra, have admittedly not been considered by the Tribunal under the impugned award, this Court is of the considered view that the matter will have to be remitted back to the Tribunal for fresh consideration on merits and in accordance with law and the Tribunal shall consider the contentions referred to supra based on the materials and evidence available on record.

8. This Court is not expressing any opinion on the merits of the claim made by the first respondent/claimant and the Tribunal shall pass an award uninfluenced by any of the observations made by this Court in this judgment.

9. For the foregoing reasons, the impugned judgment dated 13.06.2014 passed by the Motor Accident Claims Tribunal (Sub Judge, Cheyyar) in MCOP.No.68 of 2012 is hereby set aside and the matter is remanded back to the Tribunal for fresh consideration and the Tribunal after permitting the respective parties to adduce further evidence ,shall pass final award within a period of four months from the date of receipt of a copy of this judgment. However, it is made clear that the Tribunal shall confirm the findings of the Tribunal under the impugned award that the driver of the bus (insured vehicle) was alone responsible for the cause of the accident and shall give the finding only with regard to the quantum of compensation payable to the Appellant/Insurance Company raised in this appeal which have been referred to supra.

10. In the result, this civil miscellaneous appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

nl

To

The Subordinate Judge,
The Subordinate Court,
Cheyyar.

Copy To

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

C.M.A.No.2390 of 2015

SRA(CO)
RVM(08/11/2021)