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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1847 of 2016

and

C.M.P.No.11808 of 2016

The United India Insurance Co. Ltd.,
Railway Feeder Road,
Near LIC, Sulur,
Coimbatore

... Appellant/3rd Respondent

..Vs..

1.Roghul Manokar

...1st Respondent/Petitioner

2.R.Ganesh

3.A.Subramani

... Respondents 2 and 3/Respondents 2 and 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Order and decree dated 08.01.2015 made in MCOP.No.1686 of 2013 on the file of the MACT (Spl. Sub-Judge) at Coimbatore.

For Appellant : Ms.I.Malar

For Respondent 1 : Mr.M.Lokesh,
for Mr.Ma.P.Thangavel

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the Award dated 08.01.2015 passed by the Motor Accident Claims Tribunal (Spl. Sub-Judge), Coimbatore in MCOP.No.1686 of 2013.

2. The Appellant Insurance Company has challenged the impugned award on the following grounds that (a) the quantum of compensation awarded by the Tribunal is excessive (b) the claims Tribunal ought to have considered the contributory negligence on the part of the claimant who was the rider of two wheeler bearing registration no.TN38 AM 5429 and (c) the rider of the two wheeler (insured vehicle) was not possessing a valid driving license at the time of the accident.



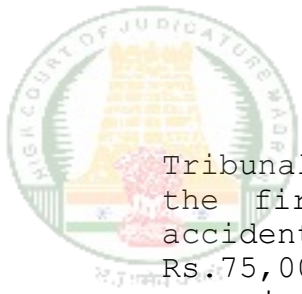
3. Heard Mr.Ms.I.Malar, learned counsel for the Appellant and Mr.M.Lokesh representing Mr.Ma.P.Thangavel, learned counsel for the first respondent. Notice sent to the second and third respondents were returned with endorsement "no such address". Since this court is going to confirm the award, notice to the second and third respondents is dispensed with by this court.

4. Before the Tribunal, the first respondent/claimant has filed 11 documents which were marked as Ex.P1 to Ex.P11 and two witnesses were examined on his side namely the first respondent/claimant himself as PW1 and the Doctor who examined him as PW2. Apart from Ex.P1 to Ex.P11, material objects were also marked on the side of the first respondent/claimant which were marked as M.O.1-series of X-ray (four numbers) and M.O.2-X-ray. On the side of the Appellant Insurance company, four documents were filed which were marked as Ex.R1 to Ex.R4 but no witness was examined on their side.

5. The Tribunal under the impugned award has directed the Appellant insurance company to pay the first respondent/claimant a sum of Rs.1,82,000/- as compensation as detailed hereunder:

Heads	Amount
Compensation for partial permanent disability	75,000/- (25 x 3,000)
Medical expenses	77,000/-
Pain and sufferings	20,000/-
Extra nourishment	5,000/-
Transport	5,000/-
Total	1,82,000/-

6. The first respondent/claimant was a B.E.Engineering student studying at Park Engineering College at Coimbatore and aged 21 years at the time of the accident. He has sustained fracture of right hand and fracture of neck of right finger and was hospitalised for almost 12 days i.e., between 27.10.2007 and 07.11.2007. The Doctor PW2 has assessed the disability of the first respondent/claimant at 25%. The Tribunal has awarded a sum of Rs.75,000/- towards disability compensation calculated at Rs.3,000/- per percentage of disability. No contra evidence has also been produced by the Appellant Insurance Company before the



Tribunal to disprove the percentage of disability suffered by the first respondent/claimant. Considering the year of the accident, the disability compensation awarded by the Tribunal at Rs.75,000/- cannot be considered to be excessive and hence the same is confirmed by this Court. The Tribunal has also awarded a compensation of Rs.20,000/- towards pain and suffering, Rs.5,000/- towards nutrition, Rs.5,000/- towards transportation and Rs.77,000/- towards medical expenses which cannot be considered to be excessive by this court, considering the nature of injuries sustained by the first respondent/claimant. After giving due consideration to the fact that the Tribunal has not awarded any compensation towards loss of amenities and attender charges, the overall compensation awarded by the Tribunal to the first respondent/claimant cannot be considered to be excessive. Therefore, the contention of the Appellant insurance company that the quantum of compensation awarded by the Tribunal to the first respondent/claimant is excessive is unsustainable.

7. Insofar as the second contention raised by the Appellant that the claimant is also at fault who was the rider of the two wheeler bearing registration No.TN38-AM-5429, due to the head on collision is concerned, the same cannot be accepted by this court, since no evidence has been produced by the Appellant insurance company before the Tribunal to support the said statement. Hence the said contention is also rejected by this Court.

8. Insofar as the contention of the Appellant Insurance Company that the rider of the two wheeler (insured vehicle) was not possessing a valid driving license is concerned, the same is also rejected by this Court for the following reasons: (a) they have not examined the RTO official to prove that the rider of the Motor cycle (insured vehicle) was not possessing a driving license at the time of the accident and (b) notice sent by the Appellant insurance company dated 21.12.2010 to the owner of the vehicle (insured) has also been returned unserved as seen from Ex.R2. Therefore the Appellant insurance company has not established that the rider of the motorcycle (insured vehicle) did not possess a valid driving license at the time of the accident.

9. For the foregoing reasons, there is no merit in this appeal. Accordingly, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



10. It is represented by the learned counsel for the Appellant Insurance company that the entire award amount has already been deposited to the credit of MCOP.No1686 of 2013. This Court directs the Tribunal to transfer the amount lying to the credit of MCOP.No.1686 of 2013 to the bank account of the first respondent/claimant through RTGS within a period of one week thereafter.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
(Motor Accident Claims Tribunal)
at Coimbatore.

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

+1cc to Mr.Ma.P.Thangavel, Advocate Sr.22958

C.M.A.No.1847 of 2016

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srg 21/10/2021