IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.803 of 2015

United India Insurance Co. Ltd.,
77, Arunachala Achari Street,
Salem - 1. ... Appellant /2nd Respondent

Vs

1.P.Raji ...1st Respondent/Petitioner
2.Sri Sakthi Vinayagar Transport,
8, Subramaniyan Street,
Maniyam Complex, Salem - 1. ...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the award and decree dated 11.11.2014 made in O.P.No.380 of 2012 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.2) Salem.

For Appellant : Mr.D.Bhaskaran

For Respondent 1 : Mr.S.P.Yuvaraj

For Respondent 2 : No appearance

JUDGMENT
(This case is heard through Video Conferencing)

This civil miscellaneous appeal has been filed by the Insurance company challenging the award dated 11.11.2014 passed by the Motor Accident Claims Tribunal (Special Sub Court No.2, Salem) in MCOP.No.380 of 2012.

2. The Appellant has challenged the impugned award on the following grounds: (a) they are not liable to compensate the first respondent/claimant as according to them, he was under the influence of alcohol at the time of the accident and he was responsible for the cause of the accident, since as a rider of the motor cycle, he had driven the said motor cycle from the left to the right side of the road which resulted in collusion between his vehicle and the bus (insured vehicle) which was

coming from the opposite direction and (b) the quantum of compensation awarded by the Tribunal is excessive.

3. The Tribunal under the impugned award directed the Appellant/Insurance Company to pay the first respondent/claimant a compensation of Rs.2,61,000/- as detailed hereunder:

Heads	Award Amount (Rs.)
Permanent disability	75,000/-
Pain and suffering	50,000/-
Medical expenses	10,000/-
Extra nourishment	5,000/-
Attender charges	15,000/-
Loss of Amenities & Enjoyment of life	40,000/-
Damages to clothes	1,000/-
Transport charges	5,000/-
Loss of income during the period of treatment	60,000/-
Total	2,61,000/-

4. Learned counsel for the Appellant drew the attention of this Court to the Rough Sketch which was marked as an exhibit before the Tribunal and would submit that only due to the fault of the first respondent/claimant, the accident had happened. He submitted that the first respondent/claimant who was the rider of the motor cycle has taken a sudden right turn in the main road which resulted in his vehicle dashing against the bus (insured vehicle) which was coming from the opposite direction. He would submit that this will reveal that it was only the first respondent/claimant who was responsible for the cause of the accident. He then submitted that the first respondent/claimant was under the influence of alcohol at the time of the accident and only due to the said factor, the accident had happened which resulted in the first respondent/claimant sustaining injuries. He drew the attention of this Court to the final report filed by the police which has been marked as Ex.R1 and would submit that FIR registered earlier has been closed as mistake of fact on the ground that the first respondent/claimant was under the influence of alcohol at the time of the accident. He would further submit that the first respondent/claimant has not discharged his burden of proving negligence against the driver of the insured vehicle. He would also submit that the first

respondent/claimant has also not examined the pillion rider of the motor cycle by name Saravanan before the Tribunal and therefore, he has not discharged his burden of proving negligence against the driver of the insured vehicle.

5. Per contra, learned counsel for the first respondent/claimant would submit that within a period of 19 days, final report has been filed by the Police (Ex.R1). He would submit that even without investigating the first respondent/claimant, the said final report has been filed. He also drew the attention of this Court to the cross examination of the police official RW2 before the Tribunal to support his submission. Learned counsel for the first respondent/claimant also drew the attention of this Court to the findings of the Tribunal and the reasonings given by the Tribunal for holding the driver of the insured vehicle alone responsible for the cause of the accident.

6. This Court has perused and examined the evidence and materials available on record. Admittedly, in the case on hand, no breath analyser test has been taken and the said report has also not been filed before the Tribunal. The first respondent/claimant has also categorically denied in his deposition that he was under the influence of alcohol at the time of the accident. The final report submitted by the Appellant (Ex.R1) though indicates that the first respondent/claimant was under the influence of alcohol at the time of the accident, the said report has been filed without investigating the first respondent/claimant. The said report was also filed within 19 days from the date of the accident. Originally FIR was registered only against the driver of the insured vehicle. No counter complaint has been given by the driver of the insured vehicle against the first respondent/claimant who was the rider of the motor cycle. Eventhough, the learned counsel for the Appellant Insurance Company drew the attention of this Court to the rough sketch which was marked as an exhibit before the Tribunal to show that the first respondent/claimant was at fault, there is no supporting evidence placed by them to substantiate their claim that it was only the first respondent/claimant who was responsible for the cause of the accident. The Tribunal has taken into consideration all the aforementioned factors and based on preponderance of probabilities has rightly held that the driver of the insured vehicle is alone responsible for the cause of the accident.

7. This Court does not find any infirmity in the said finding given by the Tribunal. Hence, the first contention raised by the Appellant Insurance company questioning their liability is rejected by this Court.

8. With regard to the second contention regarding the quantum of compensation awarded by the Tribunal is excessive is concerned, the said contention is also rejected by this Court for the following reasons:

(a) The first respondent/claimant has sustained fracture of both bones right leg and screws were also implanted on his leg. He was hospitalised for 36 days between 1.12.2011 to 05.01.2012. The nature of injuries sustained by the first respondent/claimant has also not been disputed by the Appellant Insurance company before the Tribunal. The Doctor has assessed the disability at 25%.

(b) The Tribunal has awarded a total compensation of Rs.2,61,000/- under various heads, even though under certain heads, the compensation may be on the higher side, but the overall compensation of Rs.2,61,000/- fixed by the Tribunal cannot be considered to be excessive as alleged by the Appellant Insurance Company.

9. For the foregoing reasons, there is no merit in this appeal Accordingly, this Civil Miscellaneous Appeal is dismissed. The Appellant Insurance company is directed to deposit the amount awarded by the Tribunal together with interest from the date of claim till the date of deposit and costs after deducting the amount already deposited if any to the credit of MCOP.No.380 of 2012 within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.380 of 2012 to the bank account of the first respondent/claimant through RTGS within a week thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

nl

To

1.The Special Sub Court No.2,
Salem.

+1cc to Mr.S.P.Yuaraj, Advocate, S.R.No.36189

C.M.A.No.803 of 2015

PMK(CO)
CB(21/09/2021)