IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2231 of 2016 &
CMP.No.15830 of 2016

The Branch Manager,
United India Insurance Co. Ltd.,
Branch Office, No.460/20,
First Floor, 8^{th} 'B' Main Road,
Next to Jain Temple,
4^{th} Block, Bangalore-11,
C/o. The Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Office,
M.M.Reddy Complex,
Old Bangalore Road,
Hosur – 635 109. ... Appellant/2^{nd} Respondent

Vs

1.K.Sivaguru
2.Y.R.Prasad ... Respondents/Petitioner/1^{st} Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Order and Decree dated 04.06.2015 in MCOP.No.48 of 2012 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Hosur.

For Appellant : Ms.R.Sree vidhya

For Respondent 1 : Mr.Mukund R.Pandiyan

JUDGMENT

(Heard through video conferencing)

This civil miscellaneous appeal has been filed by the Insurance company challenging the award dated 04.06.2015 passed by the Motor Accident Claims Tribunal (Subordinate Judge at Hosur) in MCOP.No.48 of 2012.

2. Heard Ms.R.Sree Vidhya, learned counsel for the Appellant Insurance Company and Mr.Mukund R Pandiyan, learned counsel for the first respondent. The second respondent has remained exparte both before this Court as well as this Court.

3. The Appellant Insurance company has challenged the impugned award on the following grounds (a) the entire fault for the cause of the accident is on the side of the first respondent/claimant and therefore, they are not liable to pay the compensation and (b) the quantum of compensation awarded by the Tribunal is excessive.

4. With regard to the first contention raised by the Appellant is concerned, the Appellant Insurance Company has filed Ex.R1 which is the final report submitted by the police after investigation and as per the said final report, the complaint given against the driver of the car insured with the Appellant was closed as mistake of fact as according to the Police after investigation, it was only the first respondent/claimant who is responsible for the cause of the accident. As seen from the final report (Ex.R1) while taking 'U' turn, the first respondent/claimant while riding his two wheeler had not given proper signal which resulted in the collision between the car insured with the Appellant and the two wheeler in which the first respondent/claimant was a rider.

5. Originally FIR was registered only against the driver of the insured vehicle which was marked as Ex.P3 before the Tribunal. After investigation, Ex.R1 has been filed wherein the police have stated that the driver of the insured car is not at fault. However, the Appellant/Insurance Company has not examined the driver of the insured car as a witness before the Tribunal. It is also not known whether the first respondent/claimant was investigated by the Police, before the final report Ex.R1 was filed by them. However, considering the fact that the Police have filed final report closing the complaint as mistake of fact and after perusing the said final report, this Court is of the considered view that some amount of contributory negligence will have to be fixed on the part of the first respondent/claimant also, instead of totally absolving his responsibility for the cause of the accident. After giving due consideration to the evidence available on record including the final report of the Police (Ex.R1), this Court fixes the contributory negligence of the first respondent/claimant at 20% and the contributory negligence of the driver of the insured car at 80%.

6. With regard to the quantum of compensation awarded by the Tribunal is concerned, the Tribunal has awarded a total compensation of Rs.3,45,500/-. Based on the disability certificate issued by the Doctor at 50% which has been marked as an exhibit before the Tribunal, the Tribunal has awarded a disability compensation at Rs.1,50,000/- calculated at Rs.3,000/- per percentage of disability for the 50% disability. The first respondent/claimant has sustained the following

injuries namely (a) Fracture in left frontal bone + left basifrontal contusion; (b) Sub-conjunctival Ecchmosis left eye, (c) Fracture Zygoma Left non-displaced fracture, (d) Peri Orbital Edema Left side, (e) Nape of neck abdomen right side and (f) Abdomen in left side frontal region as a result of an accident. Being head injuries and in view of the fact that the Doctor has assessed the disability at 50% and when no contra evidence has been produced by the Appellant Insurance company before the Tribunal to disprove the said disability, this Court confirms the disability as assessed by the Tribunal under the impugned award which is based on the Doctor's disability certificate. Hence, the disability compensation awarded by the Tribunal at Rs.1,50,000/- calculated at Rs.3,000/- per percentage of disability for the 50% disability is confirmed by this court.

7. The Tribunal has awarded a compensation of Rs.60,000/- towards pain and suffering, Rs.39,000/- towards loss of income during the period of treatment, Rs.37,000/- towards medical bills as per the bills submitted by the first respondent/claimant before the Tribunal, Rs.26,500/- towards damage to the first respondent/claimant's vehicle, Rs.5,000/- towards extra nourishment, Rs.10,000/- towards transportation and Rs.18,000/- towards Attender charges which in the considered view of this Court cannot be considered to be excessive. Only after giving due consideration to the nature of injuries sustained by the first respondent/claimant, the Tribunal has assessed the quantum of compensation payable to the first respondent/claimant. Therefore, there is no scope for interference by this Court in this regard.

8. Excepting for fixing the contributory negligence on the side of the first respondent/claimant at 20%, the assessment of compensation awarded by the Tribunal under the impugned award is not interfered with by this Court.

9. For the foregoing reasons, this civil miscellaneous appeal is partly allowed by fixing the contributory negligence on the part of the first respondent/claimant at 20% and on the part of the driver of the insured vehicle at 80%. The Appellant Insurance company is directed to deposit the 80% of the entire award amount, after deducting the amount already deposited if any, together with interest from the date of claim till the date of deposit and cost as assessed by the Tribunal to the credit of MCOP.No.58 of 2015 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.58 of 2015 to the bank account of the first

respondent/claimant through RTGS within a period of one week thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(Accounts)

//True copy//

Sub Assistant Registrar

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To

The Subordinate Judge
Motor Accident Claims Tribunal
at Hosur

Copy To

The Section Officer,
VR Section, High Court, Madras.

+1cc to Ms.R.Sree vidhya, Advocate SR.No.40086

+1cc to Mr.Mukund R.Pandiyan, Advocate SR.No.39629

C.M.A.No.2231 of 2016

AJS(CO)
GMY(28/10/2021)