



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2500 of 2019

and

C.M.P.No.11778 of 2019

United India Insurance Co. Ltd.,
Divisional Office,
104-A, Peramanur Main Road,
Salem - 7

.. Appellant/2nd Respondent

Vs.

1.Suresh

.. 1st Respondent/Petitioner

2.Santhi

3.Prabhu

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.09.2018 made in M.C.O.P.No.286 of 2016 on the file of the Special Sub Court No.2, (Motor Accident Claims Tribunal), Salem.

For Appellant : Mrs. I.Malar

For Respondents: No appearance (For R1 & R3)

J U D G M E N T

(The matter is heard through Video Conferencing/Hybrid mode)

This appeal has been filed by the appellant-Insurance Company to set aside the award dated 27.09.2018 made in M.C.O.P.No.286 of 2016 on the file of the Special Sub Court No.2, (Motor Accident Claims Tribunal), Salem.



2.The appellant is the 2nd respondent in M.C.O.P. No.286 of 2016 on the file of the Special Sub Court No.2, (Motor Accident Claims Tribunal), Salem. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.01.2016.

3.According to the 1st respondent, on the date of accident, when he was riding the Motorcycle bearing Registration No.TN-66-F-3735 near Kandampatti over bridge, on the Bangalore main road, the driver of the Tata Ace bearing Registration No.TN-24-V-1441 belonging to the respondents 2 and 3 drove the same in a rash and negligent manner and applied sudden brake without giving any signal. Due to the unexpected act of the Tata Ace driver, the 1st respondent/rider of the Motorcycle dashed against the back side of the Tata Ace and thus, the accident occurred. In the accident, the 1st respondent sustained severe fracture and injuries all over the body. The accident has occurred only due to rash and negligent driving by driver of the Tata Ace belonging to the 2nd respondent. Hence, the 1st respondent filed the claim petition claiming compensation against the respondents 2 and 3 as owners and appellant as insurer of the said vehicle.

4.The respondents 2 and 3, owners of the Tata Ace, remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the accident occurred when the 1st respondent rode the Motorcycle in a rash and negligent manner, dashed on the backside of the Tata Ace belonging to the 2nd respondent and invited the accident. The TIW Salem City Police has registered a case against the driver of the Tata Ace in Crime No.65/16 and the same was closed as mistake of fact, after issuing proper notice to the 1st respondent. The accident occurred only due to rash and negligent riding of the Motorcycle by the 1st respondent. The accident occurred on 11.01.2016 at about 6.30 p.m. But only on 18.01.2016, after 7 days of the accident, the 1st respondent has given complaint and FIR was registered on the same day. The 2nd respondent has violated the policy conditions by permitting the driver to drive the Tata Ace goods vehicle without any badge endorsement. The claim petition is bad for non-joinder of owner and insurer of the Motorcycle. At the time of accident, the 1st respondent/rider of the Motorcycle did not possess valid driving license to ply the vehicle. The 1st respondent has to prove that the driver of the Tata Ace possessed valid fitness certificate, permit and tax validity. The appellant filed additional counter statement and contended that the Registration Certificate of the Tata Ace vehicle was valid only till 08.10.2015 and the same was



not renewed on the date of accident viz., 11.01.2016. Hence, the appellant is not liable to pay compensation to the 1st respondent and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked 6 documents as Exs.P1 to P6. The appellant examined one R.K.Ramamoorthy, Special Sub-Inspector of Police, Salem Transport Corporation Investigation Wing as R.W.1, K.Karthi, Accountant of the Salem South Regional Transport Office as R.W.2, Saradha, Assistant of the Regional Transport Office, Perambalur as R.W.3 and marked 5 documents as Exs.R1 to R5. Seven documents were marked as witness evidences viz., Exs.W1 to W7. One document was marked as Court evidence viz., Ex.X1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Tata Ace belonging to the respondents 2 and 3 and directed the appellant as insurer of the said vehicle to pay a sum of Rs.7,30,182/- as compensation to the 1st respondent at the first instance and recover the same from the respondents 2 and 3.

8.To set aside the award of the Tribunal dated 27.09.2018 made in M.C.O.P.No.286 of 2016, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the accident occurred only due to rash and negligent riding by the 1st respondent, rider of the Motorcycle. The Tribunal, without there being any documentary evidence, erroneously fixed the negligence on the part of the driver of the Tata Ace. The Tribunal erroneously held that the driver of the Tata Ace drove the vehicle in a rash and negligent manner and suddenly stopped the vehicle, which caused the accident. The Tribunal failed to consider the evidence of R.W.1 and Ex.W1, the final report. The Tata Ace vehicle did not have fitness certificate at the time of accident. Hence, the Tribunal ought to have exonerated the appellant from its liability. There is no evidence to prove that income of the 1st respondent is reduced due to the injuries sustained in the accident. The 1st respondent failed to prove the monthly income. The Tribunal erroneously adopted the multiplier method and awarded excessive amounts as compensation and prayed for setting aside the award of the Tribunal.

10.Though notice has been served on the respondents 1 and 3 and their names are printed in the cause list, there is no representation for them either in person or through counsel. The notice sent to the 2nd respondent returned with an endorsement

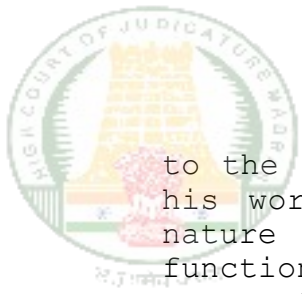


'refused'. The Registry has printed the name of the 2nd respondent in the cause list.

11. Heard the learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.

12. It is the case of the 1st respondent that while he was driving the Motorcycle, the driver of the Tata Ace belonging to the respondents 2 and 3 and insured with the appellant, which was going in front of the Motorcycle, suddenly stopped the vehicle without any indication. Due to the negligent act of the driver of the Tata Ace, the 1st respondent dashed on the backside of the Tata Ace and thus, the accident occurred. To substantiate this contention, the 1st respondent examined himself as P.W.1 and marked the FIR which was registered against the driver of the Tata Ace as Ex.P1. On the other hand, it is the case of the appellant that the accident occurred only due to the negligence of the 1st respondent and relied on Ex.W1 - final report, filed by the Investigating Officer, closing the case as mistake of fact. The Tribunal considering the judgment of this Court and the Hon'ble Apex Court, held that the negligence cannot be fixed based on the final report, but must be fixed based on the evidence and documents placed before it. The appellant has not examined the driver of the Tata Ace or any eye witness to disprove the evidence of P.W.1. The Tribunal considering the evidence of P.W.1 and in the absence of any contra evidence, held that the accident occurred due to rash and negligent driving by driver of the Tata Ace belonging to the respondents 2 and 3. As far as fixing of liability is concerned, the Tribunal considering the fact that the Tata Ace vehicle belonging to the respondents 2 and 3 did not have Fitness Certificate at the time of accident, directed the appellant to pay compensation to the 1st respondent at the first instance and recover the same from the respondents 2 and 3. There is no error in the said finding of the Tribunal, warranting interference by this Court.

13. As far as the quantum of compensation is concerned, the 1st respondent claimed that in the accident, he sustained severe fracture and injuries all over the body and has taken treatment as inpatient in Coimbatore Richmond Hospital in two different spells viz., from 12.01.2016 to 04.02.2016 and from 05.03.2016 to 10.03.2016. He was referred to the Medical Board and the Medical Board certified that the appellant suffered 40% disability. According to the 1st respondent, he was working as a Marketing Executive in Water Tech India Pvt. Ltd., and was earning a sum of Rs.19,000/- per month. He failed to prove the said contention. In the absence of any material evidence, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the 1st respondent. The accident occurred in the year 2016. The monthly income fixed by the Tribunal is not excessive. Due



to the injuries sustained in the accident, he could not continue his work as Marketing Executive. The Tribunal considering the nature of avocation and disability suffered, fixed 20% as functional disability, granted 40% enhancement towards future prospects and awarded compensation by adopting multiplier method. The total compensation awarded by the Tribunal under different heads are not excessive, warranting interference by this Court.

14. In the result, this Civil Miscellaneous Appeal is dismissed and amount awarded by the Tribunal at Rs.7,30,182/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant is directed to deposit the award amount, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.286 of 2016 at the first instance and recover the same from the respondents 2 and 3. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Special Subordinate Judge No.2,
(Motor Accident Claims Tribunal), Salem.

Copy to:

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

+1cc to Mrs.I.Malar, Advocate, S.R.No.15642

C.M.A.No.2500 of 2019

VBM(CO)
SU(01/10/2021)