



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.29 of 2014

and

M.P.No.1 of 2014

Oriental Insurance Company Limited
Divisional Office J.L.C. Building No.1,
Katpadi Road, Vellore 4

...Appellant/2nd Respondent

Vs.

S.Kamalesan

...Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.06.2013 in M.C.O.P.No.1504 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

For Appellant :Mr.K.Vinoth for
Mr.Elveera Ravindran

For Respondent :No appearance

J U D G M E N T

(This matter is heard through "Video-Conferencing".)

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 11.06.2013 in M.C.O.P.No.1504 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

2.The appellant/Insurance Company is the second respondent in M.C.O.P.No.1504 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri. The respondent filed the said claim petition claiming a sum of Rs.4,10,000/- as compensation for the injuries sustained by him in the accident that took place on 14.11.2005.



3. According to the respondent, on the date of accident i.e., on 14.11.2005 at about 2.15 p.m., while he was proceeding in the motorcycle bearing Registration No. TN 24 A 0509 towards Kaveripattinam in Krishnagiri to Dharmapuri NH Road, nearing Nalandha School, Krishnagiri, the rider of the motorcycle bearing Registration No. TN 23 AY 5119 who was coming in the opposite direction, over took the bus by riding the same in a rash and negligent manner and dashed against the motorcycle bearing Registration No. TN 24 A 0509 driven by the claimant/respondent. In the accident, the respondent sustained multiple injuries and therefore, filed the claim petition seeking compensation against the appellant and owner of the vehicle.

4. The owner of the vehicle, the first respondent in the claim petition remained ex-parte before the Tribunal.

5. The appellant filed counter statement denying the averments made by the respondent and contented that the accident has occurred only due to rash and negligent riding by the respondent. Both riders of the motorcycle bearing Registration Nos. TN 24 A 0509 and TN 23 AY 5119 did not possess valid driving license at the time of accident. The owner and insurer of the motorcycle bearing Registration No. TN 24 A 0509 are not made as parties in the claim petition and hence, the claim petition is not maintainable for non-joinder of necessary parties. Therefore, the appellant is not liable to pay any compensation to the respondent. The appellant has also denied the age, avocation, income and nature of injuries sustained by the respondent. In any event, the total compensation claimed by the respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the respondent examined himself as P.W.1 and Dr.S.Krishnan was examined as P.W.2 and marked 7 documents as Exs.P1 to P7. On the side of the appellant/Insurance Company, one Ramesh, the Sub Inspector of Police was examined as R.W.1, one Ghouse Sheriff, the Junior Assistant in RTO Office was examined as R.W.2, one Panneerselvam, Administration Officer in the appellant's Insurance Company was examined as R.W.3 and marked 8 documents as Exs.R1 to R8.

7. Pending claim petition, the owner of the Motor cycle bearing Regn.No.TN 23 AY 5119, 1st respondent in MCOP, died.



8. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider cum owner of the motorcycle bearing Registration No. TN 23 AY 5119 insured with the appellant and directed the appellant/Insurance Company to pay a sum of Rs.3,01,035/- as compensation to the respondent at the first instance and recover the same from the legal estate of owner of the offending vehicle.

9. Against the said award dated 11.06.2013 made in M.C.O.P.No.1504 of 2006, granting compensation to the respondent, the appellant/Insurance Company has come out with the present appeal.

10. Though the learned counsel appearing for the appellant/Insurance Company raised grounds with regard to negligence, at the time of arguments, he restricted his arguments only with regard to quantum of compensation granted by the Tribunal and contended that the Tribunal has failed to see the appellant has not proved that he lost his vision. In the absence of any evidence with regard to loss of vision in the left eye, the Tribunal erred in awarding compensation by fixing 75% disability for loss of permanent and partial disability. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

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

12. It is the contention of the respondent that in the accident, he lost his vision in the left eye. As per Exs.A2 to A7, the Doctor/P.W.2 certified that the appellant has suffered 75% disability. The appellant/Insurance Company has not let in any contra evidence to disprove the disability assessed by the Doctor/P.W.2. The Tribunal after perusing the documents filed by the respondent, considering the nature of injuries sustained by the respondent and evidence of Doctor/P.W.2, accepted the percentage of disability assessed by Doctor/P.W.2, applied percentage method, fixed the disability of the respondent at 75% and awarded a sum of Rs.2,25,000/- towards loss of permanent and partial disability at the rate of Rs.3,000/- per percentage. The accident is of the year 2005. The amounts granted for disability is not excessive. The Tribunal considering the age of the respondent, qualification and nature of injuries sustained by



him, awarded compensation under different heads, which are not excessive warranting any interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.3,01,035/- awarded by the Tribunal as compensation to the respondent along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment, at the first instance and recover the same from the legal estate of owner of the vehicle. On such deposit, the respondent is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

vkr

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Krishnagiri.

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

+1 CC to Mrs.Elveera Ravindran, Advocate sr 57421.

C.M.A.No.29 of 2014 and
M.P.No.1 of 2014

SJ(CO)
SP(10/12/2021)