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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.706 OF 2014

AND

M.P.NO.1 OF 2014

The United India Insurance Company Ltd.,
Divisional Office,
No.73-C, MTH Road,
Ambattur,
Chennai - 53.

... Appellant/3rd Respondent

.Vs.

1. Murugan

... 1st Respondent/Claimant

2. Solaimmal

3. Pachaiappan

... Respondents 2 & 3/
Respondents 1 & 2

PRAYER:-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.01.2013 in M.C.O.P.No.830 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Ponneri.

For Appellant : Mr.R.Ravichandran

For Respondents : No appearance
For R2

R1 & R3 - died

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 18.01.2013 in M.C.O.P.No.830 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Ponneri.



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2. The appellant/Insurance Company is the 3rd respondent in M.C.O.P.No.830 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Ponneri. The 1st respondent filed the said claim petition against the respondents 2 & 3 and the appellant/Insurance Company, claiming a sum of Rs.3,00,0000/- as compensation for the injuries sustained by him in the accident that took place on 20.03.2007.

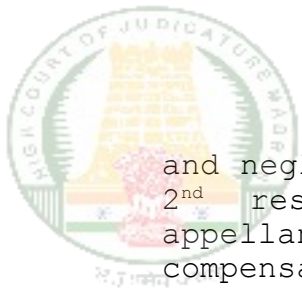
3. According to the 1st respondent, on 20.03.2007 at about 07.00 p.m., while he was riding his motorcycle bearing Registration No.TN 05 F 0568 from Thervazhi to Gummidipoondi, the driver of the auto bearing Registration No.TN 04 H 4143 belonging to the respondents 2 and 3, insured with the appellant, drove the same in a rash and negligent manner, dashed on the motorcycle driven by the 1st respondent and caused the accident. In the accident, the 1st respondent sustained injuries and took treatment in the Government Hospital, Chennai. Therefore, he claimed compensation against the respondents 2 and 3 as owners of the auto and appellant as insurer of the auto.

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

5. The appellant/Insurance Company filed counter statement, denying the accident and stated that in the Accident Registrar, it is not mentioned that 1st respondent suffered injuries in the road traffic accident. The Police was not informed about the accident. The complaint was given only after 7 days of accident. There is a difference in mentioning of the vehicle number in the First Information Report, Charge Sheet and Motor Vehicle Inspector's Report. In the First Information Report, the vehicle number is mentioned as TN 20 X 4143 and in the Charge Sheet and Motor Vehicle Inspector's Report, it is mentioned as TN 04 H 4143. At the time of accident, the vehicle belonging to the 2nd respondent was not insured with the appellant and the appellant is not liable to pay compensation. In any event, the injuries sustained by the 1st respondent are only simple injuries and not grievous injuries. The compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1, Dr.J.R.R.Thiagarajan was examined as P.W.2 and marked 10 documents as Exs.P1 to P10. The appellant/Insurance Company did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence of the 1st respondent and the fact that there is contra evidence to disprove the evidence of the 1st respondent, held that the accident occurred only due to rash



and negligent driving by the driver of the auto belonging to the 2nd respondent, insured with the appellant, directed the appellant/Insurance Company to pay a sum of Rs.2,42,000/- as compensation to the 1st respondent.

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8. Against the said award dated 18.01.2013 in M.C.O.P.No.830 of 2009, the appellant/Insurance Company has come out with the Civil Miscellaneous Appeal.

9. The learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal failed to see that it is for the 1st respondent to prove the identity of the vehicle which had dashed against him, only thereafter burden of disproving the same would be shifted to the appellant. The 1st respondent has not let in any evidence to explain the discrepancy in the identity of the vehicle. The disability of the 1st respondent fixed by the Tribunal as 75% is excessive. The Tribunal considering the nature of injuries of the 1st respondent, ought to have fixed the disability only at 25% and granted compensation. The total compensation granted by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

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

11. It is the case of the 1st respondent that while he was riding his motorcycle from Thervazhi to Gummidipoondi, at about 07.00 p.m., the driver of the auto belonging to the respondents 2 and 3, drove the same in a rash and negligent manner, dashed on the motorcycle in which the 1st respondent was riding and caused the accident. To substantiate his case, the 1st respondent examined himself as P.W.1 and marked the First Information Report as Ex.P1, which was registered against the driver of the auto. On the otherhand, it is the case of the appellant, that auto belonging to the respondents 2 and 3, insured with the appellant was not involved in the accident. In the Accident Register, the vehicle number is not mentioned. There is a difference in Registration Number of the vehicle in First Information Report and Charge Sheet. To prove their case, the appellant has not let in any oral and documentary evidence. The evidence of the 1st respondent as P.W.1 and contents of the First Information Report was not contraverted by the appellant by examining any witness and producing Accident Register and Charge Sheet.

12. Further, the accident has occurred on 20.03.2007 and in the accident, the 1st respondent sustained injuries as detailed in the claim petition. The 1st respondent took treatment as in-patient in Government General Hospital, Chennai from



20.03.2007 to 10.04.2007 and again from 24.04.2007 to 12.06.2007 and underwent surgeries. Again 1st respondent was admitted in the same hospital from 14.08.2007 to 17.09.2007. The appellant has stated that the First Information Report was registered after the delay of 7 days from the date of accident. It is well settled that the delay in filing the First Information Report is not fatal to the claim of compensation, if the claimant is able to prove that the accident has occurred as mentioned in the First Information Report. The Tribunal considering the discharge summary issued by the Government General Hospital, Chennai, nature of injuries, period of treatment taken by the 1st respondent, evidence of P.W.2/Doctor and Ex.P10/Disability Certificate, fixed the disability of the 1st respondent as 75% and granted compensation at Rs.2,000/- per percentage. Considering the materials on record, the Tribunal has granted just compensation. There is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.2,42,000/- 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-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.830 of 2009. On such deposit, the 1st respondent is permitted to withdraw the entire award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Subordinate Judge,
The Motor Accident Claims Tribunal,
Ponneri.



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

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+1cc to Mr.R.Ravichandran, Advocate, S.R.No.63188

C.M.A.NO.706 OF 2014 AND
M.P.NO.1 OF 2014

SV (CO)
PBS/24/01/2022