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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Miscellaneous Appeal No.1148 of 2021
and
CMP No. 5879 of 2021

1. Manager,
United India Insurance Co. Ltd.,
Branch Office 3, Arjuna Tower,
No.248/164 Cherry Road,
Salem District 636 001.

2. Manager
United India Insurance Co. Ltd.,
Branch Office, SRS Tower,
No.595, Mettur Main Raod,
Bhavani Erode District 638 301.
... Appellants/2nd & 3rd Respondent

Vs.

1. Thavamani

2. P. Balasubramaniam,
Residing at Prop: Sivambiga Road,
Travels, 22/1 Saradha College Road,
Adaikala Nagar,
Salem District 636 007. ... Respondents
(Respondent 2 set exparte at Trial Court,
hence notice may be dispensed with)

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 13.10.2020 made in MCOP No.359 of 2015 on the file of Motor Accident Claims Tribunal, the Subordinate Judge of Bhavani.

For Appellants : Mr. C.Paranthaman
For Respondents : Mr. P.Dhananjayan, for R1

J U D G M E N T

The Insurance Company challenges the award of a sum of Rs.14,16,665/- for the injuries suffered by the claimant in a road accident that occurred on 07.10.2014.

2. According to the claimant, when he was riding his motor cycle bearing Registration No.TN-32-AC-5065 on Coimbatore Salem Main Road near Komarapalayam, the driver of the bus bearing Registration No. TN-30-AM-0777, drove the bus in a rash and negligent manner and without any indication turned to the right and dashed against the petitioner's two-wheeler. As a result of the accident, the petitioner had suffered fractures in his right hand humerus, elbow and ulna radius. The claimant would further contend that an FIR was registered against the driver of the bus. Contending that as a result of the accident, he is unable to pursue his avocation as a mason and hence, he has suffered financial loss, the claimant sought for a compensation of Rs.20,00,000/-.

3. The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimant. It was the claimant who was responsible for the accident. He did not possess a valid driving licence and he was not wearing a helmet also. He was driving an uninsured two-wheeler. The quantum of compensation claimed was termed as excessive.

4. Before the Tribunal, the claimant examined himself as P.W.1 and one Dr. R.Krishnasamy, was examined as P.W.2, Exhibits P1 to P13 were marked. The Disability Certificate was marked as Ex.C1.

5. The Insurance Company did not choose to let in any evidence. The Tribunal upon examination of the evidence concluded that the bus driver was responsible for the accident. The Tribunal relied upon FIR, the Inspection Mahajar and the sketch to come to the conclusion that it was the negligence of the driver of the bus that caused the accident.

6. On the quantum, the Tribunal concluded that the disability caused was 45% and the same is a functional disability. Therefore, the Tribunal adopted a multiplier method to arrive at the compensation. The Tribunal fixed Rs.8,000/- as the notional monthly income of the claimant, added 40% towards future prospects and fixed the monthly income at Rs.11,200/-. Adopting a multiplier of 18, in view of the age of the claimant namely 22 years, the Tribunal fixed the total loss of income at Rs.10,88,640/-. The Tribunal also awarded the following amounts under the following heads.

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S.No.	Heads	Amount (Rs.)
1	Total loss of income	10,88,640/-
2	Compensation for pain and sufferings	40,000/-
3	Extra Nourishment	5,000/-
4	Transportation to Hospital	10,0000/-
5	Attender Charges	5,000/-
6	Medical Expenses (based on Bills)	2,68,025/-
	Total	14,16,665/-

7. Mr.Paranthaman, learned counsel appearing for the Insurance Company would vehemently contend that the Tribunal was not right in adopting future prospects in a case of injury. Adoption of future prospects in a case of injury cannot be outright rejected. In a case where it is shown that there is a functional disability and the earning power of the claimant is reduced because of such functional disability there is nothing wrong in the Tribunal adopting future prospects. Even assuming that the adoption of future prospects in a disability case not justified on the facts of this case, I am of the opinion that the Tribunal has adopted the notional income only at Rs.8,000/- which is very low and therefore, the total compensation arrived at by the Tribunal, even after adopting future prospects at 40% seems to be just and reasonable. Hence, I do not see the fact that the Tribunal has adopted future prospects as a ground to interfere with the award. The amounts awarded under the other heads are also reasonable.

8. Mr.Paranthaman, learned counsel would attempt to fault the Tribunal for not deducting any amount towards contributory negligence. I do not think, I can entertain an argument on contributory negligence by the counsel for the Insurance Company in the case on hand, inasmuch as, the Insurance Company has not attempted to lead evidence. The Insurance Company could have examined the driver of the bus which was insured with it, to prove negligence on the part of the claimant. That has not been done. The learned counsel for the Insurance Company would want this Court to assume negligence on the part of the claimant. I do not think such an approach can be adopted.

9. If the Insurance Company wants to reduce or avoid its liability on the ground of contributory negligence, it is incumbent upon the Insurance Company to lead evidence to establish negligence on the part of the claimant, if the Insurance company fails to lead evidence, I do not think the

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Insurance Company can be allowed to argue on contributory negligence except where it is a case of a statutory violation like non wearing of helmet or non possession of license.

10. Though an attempt was made by the Insurance Company to contend that the claimant did not possess a license, the same was not established, the Tribunal has held that possession of the license is not of any significant effect, since it has been held that the negligence of the bus driver alone was responsible for the accident. I do not think the said finding of the Tribunal warrants interference particularly in the absence of any evidence on the part of the Insurance Company.

11. Therefore, I do not see any merit in the Appeal, the Appeal fails and it is accordingly dismissed. The claimant is permitted to withdraw the entire compensation deposited by the Insurance Company. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IV)

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Sub Assistant Registrar

jv

To

1. The Sub Judge,
   Motor Vehicle Accident Claims Tribunal,
   Bhavani.

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

+1cc to Mr.C.Paranthaman, Advocate SR.No.3871
+2cc to Mr.P.Dhanjayan, Advocate SR.No.3960

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