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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2021

PRONOUNCED ON : 14.03.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.3235 OF 2017

AND

C.M.P.NO.20110 OF 2017

The United India Insurance
Company Limited,
Divisional Office II,
1st Floor, No.104 A,
Peramanoor Main Road,
Salem - 636 007.

... Appellant/2nd Respondent

Versus

1. Raja

... 1st Respondent/Petitioner

2. Kannan

... 2nd Respondent/1st Respondent

PRAYER:-

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.07.2017 made in M.C.O.P.No.2223 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge - I, Salem.

For Appellant : Mr.J.Chandran

For R1 : Mr.S.P.Yuvaraj

For R2 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the quantum of compensation awarded by the Tribunal in and by the award dated 12.07.2017 made in M.C.O.P.No.2223 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge - I, Salem.



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2. The appellant is the 2nd respondent in M.C.O.P.No.2223 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge - I, Salem. The 1st respondent filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.08.2015.

3. According to 1st respondent/claimant, on 19.08.2015 at about 10.00 p.m., the 2nd respondent was driving his motorcycle bearing Registration No.TN 30 AX 8149 in which he was riding as pillion rider. When the vehicle was driven on the extreme left side of the Vellalapatti - Vattakadu Road, near EB Tower bus stop, the second respondent drove the two wheeler in a rash and negligent manner and dashed against the two wheeler which came on the opposite direction. In the accident, the 1st respondent suffered fracture of both bones of right leg, crush injury on the right leg and multiple injuries all over the body. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation as against the 2nd respondent and the appellant/Insurance Company, being the owner and insurer of the two wheeler.

4. The Insurance Company defended the claim petition on the ground that the accident was caused due to the rash and negligent driving of a two-wheeler which was coming in the opposite direction. However, for the reasons best known the claimant did not implead either the owner of the two-wheeler or the insurer. However, the appellant/Insurance Company, who is the insurer of the vehicle owned by the first respondent herein alone was impleaded. Therefore, the Insurance Company has taken a stand that for non-joinder of necessary parties, the claim petition has to be dismissed. Further, it was contended that the amount of compensation claimed in the claim petition is disproportionate to the injuries said to have been suffered by the claimant are false. The Insurance Company also denied the age, avocation and other details furnished in the claim petition and prayed for dismissal of the claim petition.

5. Before the Tribunal, the claimant examined himself as PW1 and marked Exs. P1 to P5. On behalf of the second respondent in the claim petition, one K. Sekar and Dheena Karunakaran were examined as RW1 and RW2 respectively and Exs. R1 to R3 were marked.

6. The Tribunal, on consideration of the oral and documentary evidence, concluded that the Insurance Company failed to examine the first respondent/owner of the two wheeler in which the claimant was travelling as a pillion rider. The Tribunal therefore refused to accept the plea of the Insurance



Company that an unknown vehicle had hit the two wheeler driven by the first respondent and caused the accident. For the failure of the Insurance Company to examine the first respondent/owner, the Tribunal has taken an adverse inference to conclude that the accident had occurred due to the rash and negligent driving of the first respondent and the theory put forth by the Insurance Company that the first respondent fell on his own has been rejected.

7. As regards compensation, the Tribunal taken note of 47% of the disability assessed by the Doctor. A sum of Rs.6,000/- per month was taken as the monthly income of the claimant and applied multiplier '16'. However, the Tribunal also taken the disability only at 20% and awarded a sum of Rs.2,30,400/- as compensation towards disability. That apart, a sum of Rs.3,45,506/- was awarded towards "Medical Expenses" as per Ex.P6. The Tribunal has also awarded various other amount and in all a total sum of Rs.6,80,906/- was awarded as compensation.

8. Aggrieved by the same, the appellant/Insurance Company has come forward with this appeal.

9. The learned counsel appearing for the appellant/Insurance Company submitted that the claimant as well as the rider of the two-wheeler are related to each other. Only for the purpose of getting compensation, the present claim petition has been filed without impleading the owner and the Insurance Company of the another unknown vehicle said to have caused the accident. When it is pleaded by the claimant that some other two-wheeler was involved in the accident, the onus is on the part of the claimant to implead the owner of the said two-wheeler as well as the insurer to get compensation. However, in the present case, conveniently they have not been impleaded. The Tribunal instead of taking an adverse inference against the claimant had drawn an adverse inference against the appellant for the alleged failure to examine the first respondent before the Tribunal. In fact, R.W.1 Sekar, Special Sub Inspector of Police had deposed that no other vehicle collided with the vehicle driven by the first respondent. R.W.1's evidence is entirely contradictory to the averment made in the counter of the second respondent. In this regard, the learned counsel for the appellant/Insurance Company placed reliance on the decision of the Division Bench of this Court in C.M.A.No.1096 of 2017 dated 13.04.2017 to contend that the person who is responsible for the negligent driving was not brought on record but the Tribunal has mulcted liability on a wrong person who is not liable to pay compensation.

10. On the above contention, this Court heard the learned counsel for the respondents/claimants and perused the materials



available on record.

11. The Tribunal has given a categorical finding that there is a failure on the part of the Insurance Company to examine the first respondent who is the owner of the vehicle in which the claimant travelled at the time of accident. Even though, the present appeal has been filed by the appellant/Insurance Company contending that some other vehicle was also involved in the accident, the fact remains that the appellant could have examined the first respondent to bring out those facts. However, the failure on the part of the Insurance Company to do so before the Tribunal cannot be gone into by this Court at the stage of appeal.

12. As regards quantum, even though, the Doctor assessed 47% as disability of the claimant, the Tribunal had taken only 20% as the disability and awarded a sum of Rs.2,30,400/-. That apart, the Tribunal awarded a reasonable compensation towards loss of amenities, extra nourishment, pain and suffering, etc. This Court do not find any reason to interfere with the amount awarded thereof by the Tribunal inasmuch as they are befitting the nature of injuries sustained by the claimant as could be seen from Ex.P2 to P5. The medical expenses awarded by the Tribunal is based on Ex.P6, bills. While so, the compensation awarded by the Tribunal stands confirmed.

13. In the result, this Civil Miscellaneous Appeal is dismissed by confirming the judgment and decree dated 12.07.2017 passed in M.C.O.P.No.2223 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge - I, Salem. No costs. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, 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.2223 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Salem. 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 application before the Tribunal. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

rsh/ssi



To

The Special Sub Judge - I,
The Motor Accidents Claims Tribunal,
Salem.

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+1cc to Mr.J.Chandran, Advocate, S.R.No.16966

C.M.A.NO.3235 OF 2017

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