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C.M.A.No.2857 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A. No.2857 of 2019
and
C.M.P. No.14901 of 2019

1.United India Insurance Co. Ltd.,
1343, Sathy Main Road,
Bharathi Complex, Ganapathy,
Coimbatore-641 006.

2.United India Insurance Co. Ltd.,
18/106, Mettupalayam Road,
Thudiyalur, Coimbatore. ... Appellants

VS.

1.K.Ganesh
2.Jayakumar
3.Joshua Deva Irakkam ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree dated 06.06.2017 made in M.C.O.P.No.233 of 2013 on the file of the Motor Accident Claims Tribunal (Spl. Sub-Judge) at Coimbatore.

For Appellants : Ms.I.Malar

For Respondent 1 : Mr.J.Arokkiaraj

For Respondent 2 : No Appearance

For Respondent 3 : Not ready in notice



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JUDGMENT

WEB COPY The Insurance Company of the first respondent as well as the vehicle belonging to the petitioner respectively has challenged the award passed by the Motor Accident Claims Tribunal Special Sub-Court, Coimbatore, in M.C.O.P.No.233 of 2013 on the ground of both negligence as well as on the ground of the quantum being excessive.

2. The facts briefly are as follows and the parties in this judgment are referred to in the same ranking as before the Tribunal.

3. The petitioner/ first Respondent herein had filed the above claim petition seeking compensation of a sum of Rs.13,44,039/- for the injuries sustained by him in a road accident on 10.06.2012. It is the contention of the petitioner that on the said date, he was proceeding home at about 09.45 p.m. at Kurinji Nagar on 50 feet road from South to North during which time, a motor bike belonging to the first respondent bearing Registration No.TN 48 H 3114 which was driven by the first respondent in a rash and negligent manner without even switching on the headlights has dashed against the petitioner's vehicle. As a result of this, the petitioner had been thrown out of the bike and has sustained grievous injuries including a



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grievous head injury. The petitioner was initially admitted in Government Hospital, Coimbatore and was later shifted to K.G.Hospital, Coimbatore, he remained as an inpatient from 10.06.2012 to 02.07.2012 where he had to undergo a surgery in respect of his fractured nasal bone and fracture in the forehead. The petitioner's vehicle had also sustained excessive damage. The petitioner would also submit that on account of the accident he was having recurring headaches and memory loss, for which he had to take further treatment. He would state that he was aged about 20 years and was working as a part time sales man as well as studying in College. He would contend that he was earning an income of Rs.8,000/- per month. The third respondent had filed the counter denying the nature of accident and contending that the FIR had been registered only against the petitioner and after filing the charge sheet, the matter was pending before the Judicial Magistrate-I, Coimbatore. He would further contend that the accident had occurred only on account of the negligence on the part of the petitioner. They would also question the age, income and occupation of the petitioner.

4. The fourth respondent/ second appellant herein which is also the same Insurance Company and the insurer of the vehicle driven by the appellant, had filed a counter on more or less on the same lines.



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WEB COPY 5. The Tribunal by its award dated 06.06.2017 was pleased to hold that it is the second respondent's vehicle that was responsible for the accident and proceeded to award compensation of a sum of Rs.10,42,646/-. Aggrieved by the said order, the third respondent Insurance Company is before this Court.

6. Heard both sides and perused the materials on record.

7.1. As regards the arguments of the learned counsel for the third respondent regarding negligence, this Court has to hold that the accident had occurred only on account of the negligence on the part of the driver of the first respondent vehicle. In the Criminal Court Proceedings, the first respondent, namely, the owner of the offending vehicle had set up a case that the accident had occurred when the petitioner's motor cycle had hit his motor cycle from behind. However, the Criminal Court has examined the Motor Vehicle Inspector's Report which clearly shows that it is the front portion of the offending vehicle which has been damaged and that both the vehicles were therefore proceeding in opposite directions. Therefore, the



arguments with reference to negligence has to necessarily fail. Yet another ground raised, namely, the fact that the headlights of the offending vehicle has been switched off at the time of the accident. The accident had occurred sometime in the night and it is seen that the offending vehicle did not have its headlights switched on and it is this that has resulted in the accident. Therefore, the finding of the Tribunal that the accident had occurred only on the ground of the rash and negligent driving of the driver of the offending vehicle has to necessarily be sustained. The following documents namely, Ex.P11 and P12 would clearly describe the seriousness of the injuries sustained by the petitioner. The petitioner has been an inpatient for over 20 days initially and thereafter for 9 days. The petitioner has sustained the following injuries:

- i) Mid-frontal depressed fracture with fracture of both orbital roof and ethmoids.
- ii) Fracture later wall of both orbits.
- iii) Bilateral fracture maxilla.
- iv) Mid-palatal fracture.
- v) Laceration 4 cm long over the right frontal region.
- vi) Laceration 2 cm long over the left supraorbital ridge (media lend).



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vii) Laceration 4x1 cm over the lower hip.

7.2. The petitioner also had to undergo a surgery and a plate fixation for his fracture to the nasal bone etc., both the surgeries would have been painful for the petitioner. Therefore, the award granted under the various heads appear to be very reasonable, particularly taking into account the fact that after the accident and the initial treatment, the petitioner had to return for a follow up treatment.

8. In these circumstances, I see no reason to interfere with the well-settled award of the Tribunal below. Accordingly, the Civil Miscellaneous Appeal stands dismissed and the judgment and decree dated 06.06.2017 made in M.C.O.P.No.233 of 2013 on the file of the Motor Accident Claims Tribunal (Spl. Sub-Judge), Coimbatore, is confirmed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Speaking / Non-speaking order
mka



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To:

- 1.The Special Sub-Judge,
Motor Accident Claims Tribunal,
Coimbatore.
- 2.United India Insurance Co. Ltd.,
1343, Sathy Main Road,
Bharathi Complex, Ganapathy,
Coimbatore-641 006.
- 3.United India Insurance Co. Ltd.,
18/106, Mettupalayam Road,
Thudiyalur, Coimbatore.
- 4.The Section Officer,
V.R.Section,High Court of Madras,
Chennai.



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P.T. ASHA, J.

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