



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2022

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.64 of 2018
and
C.M.P(MD)No.1000 of 2018

The Branch Manager,
United India Insurance Company Ltd.,
No.54A, Mythili Niwas,
New Agraharam, Palani Road,
Dindigul Town & District.

.. Appellant /2nd Respondent

Vs

1.Suganthi

.. 1st Respondent / Petitioner

2.John Jeyakumar

.. 2nd Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 31.08.2017, passed in M.C.O.P.No.134 of 2014 by the Motor Accident Claims Tribunal / Principal District Court, Dindigul.

For Appellant : Mr.A.Ilango

For Respondent No.1 : Mr.M.Prabu

For Respondent No.2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 31.08.2017, passed in M.C.O.P.No.134 of 2014, on the file of the Motor Accidents Claims Tribunal / Principal District Court, Dindigul.

2.The Insurance Company is the appellant herein, challenging the award of the Tribunal made in M.C.O.P.No.134 of 2014 on the grounds of liability as well as quantum.

3.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.



4.The claim petitioner is the injured, who sustained injuries in the road transport accident. On 22.05.2013, while she was travelling as pillion rider in a two wheer driven by P.W.3, in order to avoid the sudden hit against the crossing lamb, P.W.3 applied brake and the bus of the Tamil Nadu State Transport Corporation came from behind, dashed against her and she sustained injuries. Though the First Information Report was filed against the driver of the Tamil Nadu State Transport Corporation bus, subsequently the case has been closed as 'undetectable'.

5.On the side of the claim petitioner, the injured is examined as P.W.1 and the rider of the two wheeler is examined as P.W.3 and Ex.P.1 to Ex.P.8 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined.

6.On consideration of both the oral and documentary evidence, the Tribunal had come to a conclusion that due to the rash and negligent driving of the first respondent, the rider of the two wheeler, the accident has takenplace and consequently, the second respondent, namely, the Insurance Company is jointly and severally held liable and also awarded a sum of Rs.3,69,000/-.

7.Aggrieved against the said award, the Insurance Company has filed this appeal.

8.Heard the learned counsel for the respective parties and perused the records.

9.My attention was drawn to the cross-examination of P.W.3, the occurrence witness. The owner of the two wheeler, who is also rider of the two wheeler at the time of the accident, deposed as an occurrence witness on behalf of the claim petitioner. While he was in the witness box as P.W.3, on behalf of the Insurance Company, a suggestion was made to him that due to the rash and negligent driving of him, the accident has takenplace, which was denied. But, it is only a scrap answer for such suggestion. The Insurance Company cannot take advantage of the same. It is the consistent evidence of P.W.1, injured and P.W.3, occurrence witness that the accident has takenplace due to the rash and negligent driving of the first respondent, namely, P.W.3. Accordingly, the finding rendered by the Tribunal in this regard is hereby confirmed and the contention raised by the appellant / Insurance Company stands negatived.

10.On the point of quantum of compensation, both the parties were heard.

11.P.W.2, Dr.Jeyabalachandran, based upon Ex.P.2, Discharge Summary, had issued Ex.P.5, Disability Certificate, fixing the disability at 30%. Admittedly, he is not the treated doctor.



Furthermore, he has issued the Disability Certificate after three years from the date of accident. What had happened between the three years is not known. As per Ex.P.2, Discharge Summary, the claim petitioner was admitted on 22.05.2013 and seems to have been discharged from the hospital on 15.06.2013 and she was diagnosed to have suffered from "Post traumatic diffuse axonal injury and left sylvian subarachnoid hemorrhage" and hence, the percentage of disability fixed by the Tribunal is on the higher side and the same is reduced to 22%. Admittedly, now the claim petitioner is working as a teacher and also obtained promotion and accordingly, the pecuniary loss due to disability is arrived at Rs.66,000/- [22 x 3000 = 66,000].

12.The compensation of Rs.2,14,000/- awarded towards medical expenses, under Ex.P.2, medical bill for Rs.1,54,000/- and Ex.P.4 medical bill for Rs.60,038, is kept intact. The compensation of Rs.25,000/- awarded towards pain and sufferings, Rs.15,000/- awarded towards extra nourishment, Rs.15,000/- awarded towards transportation and Rs.10,000/- awarded towards loss of amenities, appear to be just and reasonable. Accordingly, the compensation awarded by the Tribunal is reduced from Rs.3,69,000/- to Rs.3,45,000/-, which shall carry interest at the rate of 7.5% per annum.

13.In the result, this Civil Miscellaneous Appeal is partly allowed on the point of quantum of compensation. The quantum of compensation awarded by the Tribunal is reduced from Rs.3,69,000/- to Rs.3,45,000/- which shall carry interest at the rate of 7.5% per annum. The appellant / Insurance Company is directed to deposit the entire compensation of Rs.3,45,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.134 of 2014 on the file of the Motor Accidents Claims Tribunal / Principal District Court, Dindigul, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made by the appellant / Insurance Company, the first respondent / claimant is at liberty to withdraw the same, after following due process of law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)



To

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Dindigul.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.M. PRABU, Advocate (SR-19561[F] dated 20/04/2022)

+1 CC to M/s.A. ILANGO, Advocate (SR-19655[F] dated 20/04/2022)

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