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C.M.A.No.1486 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1486 of 2018

and

C.M.P.No.11811 of 2018

United India Insurance Co. Ltd.,
Oriental Complex
No.77, A.A Street
Salem-1.

... Appellant

..Vs..

1.C.Palani
2.R.Manoharan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 19.08.2016 made in MCOP.No.810 of 2005, on the file of the Motor Accident Claims Tribunal / II Additional Subordinate Court, Salem.

For Appellant : Mr.C.Paranthaman

For Respondents : Mr.B.Vasudevan for R1



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J U D G M E N T

This appeal has been filed by the Appellant/Insurance Company challenging the award dated 19.08.2016 passed by the the Motor Accident Claims Tribunal / II Additional Subordinate Judge, Salem in MCOP.No.810 of 2005.

2. The Appellant has challenged the award on the ground that the quantum of compensation awarded by the Tribunal is excessive and also on the ground that they are not liable to compensate the claim of the claimant, since the driver of the insured vehicle was not possessing a driving license at the time of the accident.

3. The learned counsel appearing on behalf of the appellant mainly contended that the accident had occurred due to the negligence of the driver of the 1st respondent in main OP. The Tribunal has failed to consider the fact that at the time of accident, the driver of the insured vehicle did not possess valid driving license and violated the policy conditions. Hence the



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Tribunal ought to have exonerated the Insurance company from the liability or atleast pay and recovery might have been considered. The compensation awarded by the Tribunal towards towards disability is highly excessive. At the outset, it is contended that the over all compensation granted by the Tribunal is exorbitant and not in commensuration with the gravity of the injuries sustained by the first respondent/claimant.

4. The learned counsel appearing on behalf of the first respondent/claimant disputed the contention by stating that considering the grievousness of the injuries, the Tribunal awarded the compensation and there is no excessive award and accordingly, the appeal is liable to be dismissed.

5. The accident occurred on 24.11.2004 at about 7.30 a.m, at Tharamangalam to Thulasampatti Road, near Earikodi. The Tharamangalam Police Station registered a case in Crime No.355 of 2004. The first respondent/claimant sustained fracture of left leg, lacerated wound in the right heel, injuries on the chest and also multiple injuries all over the body.



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He had taken treatment as inpatient and thereafter, the claim petition was filed. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. As far as the negligence is concerned, the Tribunal based on the FIR-Ex.P1 document, arrived a conclusion that the accident occurred due to the rash and negligent driving of the driver of the vehicle viz., TVS Suzuki bearing Registration No.TN-30 X 1078 belonging to one Mr.R.Manoharan, the first respondent in the claim petition. Thus, the appellant/Insurance Company was directed to pay compensation to the first respondent/claimant.

6. The Doctor has assessed the disability of the first respondent/claimant at 36% as seen from the disability certificate Ex.P6. Considering the fact that claimant sustained two bone fracture in his left leg and due to which he suffered impairment of movement, the Tribunal has assessed the disability only at 36% as assessed by the doctor. The claimant in his claim petition has claimed that he was doing power loom and milk vending business and earning monthly income of Rs.5000/- and he was aged 53 years at the time of the accident. The Tribunal has taken into



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consideration all these factors and only thereafter, awarded the compensation of Rs.72,000/- towards disability by applying percentage method. This Court does not find any infirmity in the assessment of compensation made by the Tribunal under the impugned award.

7. Insofar as the contention raised by the Appellant namely, non-possession of driving license by the driver of the insured vehicle at the time of the accident is concerned, as seen from the evidence available on record, in Ex.P4 MVI report, it is stated that the driver of the TVS Suzuki did not possess driving license. However, the Appellant Insurance Company has not examined the driver of the insured vehicle nor sent any notice to the insurer or the driver of the insured vehicle calling upon them to produce a copy of the driving license. They have also failed to examine the concerned Regional Transport Officer to prove the said contention. In the absence of any such material evidence, the Tribunal has rightly not granted pay and recovery rights to the Appellant Insurance Company.



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8. For the forgoing reasons, the contentions raised by the Appellant have to be rejected as there is no merit in this appeal. Accordingly, this appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal after deducting the amount already deposited, if any, to the credit of MCOP.No.810 of 2005 within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. Consequently, connected miscellaneous petition is closed. No costs.

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Index: Yes/No
Speaking/Non-speaking order
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To
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1. The Motor Accident Claims Tribunal /
II Additional Subordinate Court, Salem.

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



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A.A.NAKKIRAN, J.

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