IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.153 of 2018 and
Cros. Obj. No.46 of 2020 and
CMP No.1906 of 2018

In CMA No. 153 of 2018

United India Insurance Company Ltd.
Branch Office-1, 2nd Floor,
104 A, Peramanur Main Road
Salem - 636 001 ... Appellant

Vs.

1. Senthilkumar

2. Perumal

3. Raja ... Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 18.08.2017 made in M.C.O.P.No.521 of 2011 on the file of the Motor Accidents Claims Tribunal (Special Sub Court), Salem.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mr.S.P.Yuvaraj for R1
R2-Notice Dispensed With
R3-Notice Refused, Name printed in the cause list. No Appearance

In Cros. Obj. No.46 of 2020

Senthilkumar ... Appellant

Vs.

1. United India Insurance Company Ltd.
   Branch Office-1, 2nd Floor,
   104 A, Peramanur Main Road
   Salem - 636 001

2. Perumal

3. Raja ... Respondents

Prayer: This Cross Objection is filed under Order 41 Rules 22 of Civil Procedure Code, for enhancement of compensation amount awarded in the Judgment and Decree dated 18.08.2017 in M.C.O.P.No.521 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem.

For Appellant : Mr.S.P.Yuvaraj

For Respondents : Mr.D.Bhaskaran for R1
R2-Notice Dispensed With
R3- Notice Refused, Name printed in the cause list. No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the Insurance Company against the Award and decree dated 18.08.2017 made in M.C.O.P.No.521 of 2011 on the file of the Motor Accidents Claims Tribunal (Special Sub Court), Salem.

2. The Cross Objection is filed by the claimant for the enhancement of compensation amount awarded in the Judgment and Decree dated 18.08.2017 in M.C.O.P.No.521 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem.

3. The appellant is the insurer and the 2nd respondent herein is the owner of the offending vehicle namely Lorry bearing Regn.No.TN-28-B-5594, and the 3rd respondent herein is the previous owner of the said Lorry.

4. The case of the claimant is that, on 01.07.2010 at about 19.30 hrs., he was riding the motor-cycle bearing Regn. No.TN-30-AY-4591 after finishing his work in order to go to his house, on the Deevattipatty to

Bommidi road in slow and cautious manner. When he was nearing Bethel Bridge, the lorry of the 2nd respondent herein, bearing Regn.No.TN-28-B-5594, which came from the opposite direction and driven by its driver in an uncontrollable speed without minding the traffic Rules and Regulations, dashed against the motorcycle, due to which, the claimant sustained grievous injuries. Immediately, he was taken to Manipal Hospital, Salem and admitted as an in-patient from 01.07.2010 to 09.07.2010 and again, he was admitted in a Government Hospital, Chennai. The claimant spent more than Rs.3,50,000/- for his treatment. The claimant filed a claim petition in M.C.O.P.No.521 of 2011 on the file of the Motor Accidents Claims Tribunal (Special Sub Court), Salem, claiming compensation of Rs.50,00,000/- against the owner and Insurer of the offending Lorry stating that the claimant was working as a Kabadi and Kungfu Coach and was earning Rs.6,000/- per month and due to the accident, he was not able to speak and his hearing capacity was reduced and due to the head injury, he was getting giddiness and falling down.

5. In order to substantiate the case of the claimant before the Tribunal, on the side of the claimant, 7 witnesses were examined as P.W.1 and P.W.7 and 43 documents were marked as Ex.P.1 to Ex.P.43. On the side

of the 2nd respondent/Insurance Company, 2 witnesses were examined as R.W.1 and R.W.2 and 7 documents were marked as Ex.R1 to Ex.R7.

6. Before the Tribunal, 1st respondent/2nd respondent herein, was set ex-parte. The claim petition in respect of the 3rd respondent herein was dismissed.

7. The Tribunal, after hearing the arguments of both sides and considering the materials available on record, fixed the liability on the appellant/Insurance Company and awarded compensation of Rs.7,72,211/-.

8. Aggrieved by the Award passed by the Tribunal, the Insurance Company has filed the present appeal before this Court in CMA No.153 of 2018 and the claimant has filed the cross objection in Cross Obj. No.46 of 2020 for enhancement of compensation.

9. The learned counsel for the appellant/Insurance Company submitted that the alleged Lorry bearing Regn. No.TN-28-B-5594 was not at all involved in the accident. The motor-cycle of the 1st respondent/claimant

bearing Regn.No.TN-30-AY-4591 and yet another 2 wheeler bearing Regn. No.TN-30-AD- 0681 were only involved in the accident. Since both the two wheelers were not insured with any Insurance Companies, in order to get compensation, the alleged Lorry was shown as the offending vehicle in this case. The driver of the said Lorry/2nd respondent herein was examined as R.W.1 in this case and also in the connected MCOP No.13 of 2012 on the file of the Sub Court, Rasipuram, wherein, he has clearly stated that the said lorry was not involved in the accident. The accident had actually happened due to the collision of 2 two wheelers, due to which, both the riders of the two wheelers sustained injuries and were subsequently admitted in the hospital. However, no copy of the Accident Register was marked. Though wound certificate and the discharge summary were marked, in both the documents, it was only stated that the accident had happened due to the collision of 2 two wheelers and there was no whisper about any lorry. Even R.W.1 has categorically deposed that he was called by the Police and his signature was obtained under threat and subsequently, the FIR was registered against him and that there was no proof to show that the accident had occurred only due to the rash and negligent driving of the driver of the lorry. Further, in the connected case, the Tribunal by holding that the said lorry was not involved in the accident, dismissed the claim petition in MCOP No.13 of 2012 on the file of the Sub Court, Rasipuram, filed by the injured/rider of the yet another two wheeler, by order dated 06.11.2017. However, in this case, the Tribunal has failed to appreciate the counter filed by the appellant/Insurance Company and also the evidence of R.W.1 and erroneously came to the conclusion that the said Lorry was involved in the accident. Even though the reason sated by the Tribunal is not factually correct, yet, the Tribunal has fixed the liability on the appellant/Insurance Company, which warrants interference by this Court.

10. The learned counsel for the claimant submitted that, admittedly, in the wound certificate, it is mentioned that the accident had happened due to the hit of 2 two wheelers. The fact remains that, at the time of admission of the claimant in the hospital, the injured/claimant was unconscious and he did not know as to who had admitted him in the hospital. Since in the wound certificate and discharge summary, the history of the case was mentioned as if the accident had happened due to the collision of 2 two wheelers, it does not mean that the alleged Lorry was not involved in the accident. The FIR was registered only against the driver of the said Lorry. The driver of the Lorry

has also admitted that he had given a statement before the Police admitting the accident. Though he has stated that due to the threat made by the Police only, he had given such a statement, he has not filed any complaint to any Superior Police Officer against the Police who had threatened him to give such a statement. The learned counsel further submitted that based on the complaint given by the Insurance Company, investigation was conducted and the investigation report revealed that the said Lorry was involved in the accident and that the husband of P.W.2 was examined by police and his statement was also recorded by the police and he has stated that due to the rash and negligent driving of the lorry, the accident had happened. Therefore, mere non-mentioning of the involvement of the Lorry in the wound certificate or any other medical report will not decide the case of the claimant. In this case, the claimant has proved that the accident had happened due to the rash and negligent driving of the driver of the Lorry. Further, the change of policy in the name of the 2nd respondent herein from the previous owner/3rd respondent herein, a day after the accident, would clearly show that the said Lorry was involved in the accident. The Tribunal has rightly appreciated the oral and documentary evidence and fixed the liability on the appellant/Insurance Company, since the appellant/Insurance Company is the insurer of the alleged offending Lorry. The claimant is a 3rd party and therefore, as a 3rd party to the insurer, the appellant/Insurance Company is liable to pay the compensation and therefore, there is no merit in the appeal filed by the Insurance Company and the same is liable to be dismissed. The learned counsel further submitted that though the Tribunal rightly fixed the liability on the appellant/Insurance Company, the quantum of Award passed by the Tribunal does not reflect the "just compensation" and therefore, the claimant has filed the cross objection herein for the enhancement of compensation seeking "just compensation" and the same may be allowed.

11. Heard both sides and perused the entire materials available on record.

12. The accident is not in dispute and the date of accident is also admitted. However, according to the appellant/Insurance Company, the alleged Lorry was not involved in the accident. Even though soon after the accident, the claimant/injured was admitted in the hospital, the claimant has not marked the copy of the Accident Register. Even in the wound certificate and discharge summary, the history of case was clearly mentioned as if the

accident was due to the collision of 2 two wheelers and there was no mentioning about any Lorry. Though the accident had occurred on 01.07.2010, the complaint has been given on the next day only i.e. on 02.07.2010 and on the same day, FIR has been registered involving the said Lorry. The driver of the Lorry was examined as R.W.1 both in this case and also in the connected claim, filed by the dependants of the driver of the other two wheeler involved in the same accident wherein, he has categorically stated that the Lorry was not involved in the accident and he never knew about the accident. Subsequent to the accident, he was called by the Police, by stating that 2 two wheelers which were met with an accident were not insured and in order to get compensation, he was forced to give a statement as if his Lorry only involved in the accident. Admittedly, no insurance policy was produced to show that either of the two wheelers alleged to have been involved in the accident were insured with any Insurance Company and it is seen that since both the two wheelers were not covered with insurance policy and both the riders of the two wheelers sustained injury, in order to get compensation, with the help of the Police, FIR was registered involving the Lorry.

13. Further P.W.2, who is alleged to be the eye-witness to the accident, though stated that she is a resident of the nearby place of the accident, she has not stated as to who took the injured to the hospital. She also stated that her husband was also with her and both of them have seen the accident. But, nowhere, her husband was either shown as a chance witness or was examined before the Tribunal. Though the learned counsel for the claimant stated that on the complaint given by the Insurance Company, the husband of P.W.2 was examined, that cannot be accepted. If at all the Police had conducted enquiry immediately after the accident, P.W.2 and her husband might have been shown as eye-witnesses either in the FIR or in the charge sheet and subsequently, they might have also been examined as witnesses whereas, P.W.2 was not summoned and she was only brought in by the claimant and she was examined before the Court as P.W.2. and she has stated what the injured/claimant has not stated.

14. This Court, as an appellate Court and as final Court of fact finding, while re-appreciating the entire evidence and materials independently, especially the wound certificate and discharge summary, finds that neither the name of the driver of the alleged Lorry, nor the involvement of the alleged

Lorry was mentioned in the said certificates. Further, this Court finds that the Tribunal has not properly appreciated the evidence of R.W.1/driver cum owner of the Lorry who had categorically stated that the Lorry was not involved in this case and when he was brought to the Police Station on 01.07.2010 his statement was obtained under threat and subsequently, FIR was registered against him on the next day i.e. 02.07.2010 and he was informed that, 2 two wheelers which were involved in the accident were not insured and in order to get claim, his Lorry was implicated.

15. Further, the claimant has not produced any documents to show that either his two wheeler or the other two wheeler which was involved in the accident, was insured with any Insurance Companies. In the absence of the same, the defence taken by the appellant/Insurance Company is probable. The defence taken by the appellant/insurance Company has been established and the driver of the lorry was examined and he has clearly stated the reasons as to why his Lorry was implicated in this case. But when the onus is shifted to the claimant, the claimant has not proved his case that the alleged Lorry only was involved in the accident or the said 2 two wheelers were covered with Insurance Policy and that the said Lorry was not implicated for the

purpose of any insurance claim. Even though the driver of the Lorry/R.W.1 had made some allegations against the Police Officer/Investigating Officer, the claimant has not examined the Police to disprove the same Therefore, the finding of the Tribunal with regard to fixation of liability on the appellant/Insurance Company is perverse.

16. Admittedly, the appellant is not the insurer of any of the said two wheelers and they are only the insurer of the said Lorry. Once it is found that the Lorry was not involved in the accident and the appellant/Insurance Company is not the insurer of any of the alleged 2 two wheelers, the appellant/Insurance Company is not liable to pay any compensation to the claimant. Since both the riders of the two wheelers are tort-feasors, both the riders of the two wheelers are not entitled to get any compensation.

17. Therefore, this Court finds that the liability fixed by the Tribunal on the appellant/Insurance Company is perverse. Hence, the findings of the Tribunal dated 18.08.2017 made in M.C.O.P.No.521 of 2011 on the file of the Motor Accidents Claims Tribunal (Special Sub Court), Salem, is set aside.

18. Accordingly, the Civil Miscellaneous Appeal filed by the Insurance Company is allowed. The cross objection filed by the claimant is rejected. Consequently connected Miscellaneous Petition is closed. There shall be no

order as to costs.

19. The Insurance Company is permitted to withdraw the entire amount if any deposited by them before the Tribunal.

03.08.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1. The Motor Accidents Claims Tribunal
   Special Subordinate Judge No.II,
   Villupuram.

2. The Section Officer,
   VR Section,
   High Court,
   Madras.

P.VELMURUGAN. J.

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.M.A. No.153 of 2018 and
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