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C.M.A.No.1851 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2023

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THE HON'BLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1851 OF 2018
AND CROS.OBJ.No.6 OF 2019
AND CMP No.14320 OF 2018

CMA No.1851/2018

The Divisional Manager
Shriram General Insurance Co. Ltd.,
E-8, EPIP, RIICO, Sitapura,
Jaipur, Rajasthan.

... Appellant

..Vs.

1.Dr.M.Sudhakar
2.Chinnappan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 16.11.2017 made in M.C.O.P.No.503 of 2017, on the file of Motor Accident Claims Tribunal (Special Sub Judge) Tiruvannamalai.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.K.Varadhakamaraj for R1
No appearance for R2



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Dr.M.Sudhakar

... Cross Objector

Vs.

1.The Divisional Manager
Shriram General Insurance Co. Ltd.,
E-8, EPIP, RIICO, Sitapura,
Jaipur, Rajasthan.

2.Chinnappan

... Respondents

PRAYER: Cross Objections filed under Order XLI Rule 22 of Civil Procedure Code, to set aside the decree and judgment dated 16.11.2017 made in M.C.O.P.No.503 of 2017, on the file of Motor Accident Claims Tribunal (Special Sub Judge) Tiruvannamalai.

For Cross Objector : Mr.K.Varadhakamaraj

For Respondent : Mr.S.Dhakshnamoorthy for R1

No appearance for R2

COMMON JUDGMENT

Both the Civil Miscellaneous Appeal and Cross Objections have been preferred against the decree and judgment dated 16.11.2017 passed in M.C.O.P.No.503 of 2017 by the Motor Accident Claims Tribunal (Special Sub Judge) Tiruvannamalai.



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2. For the sake of convenience, the parties are called as per their

ranking before the Motor Accident Claims Tribunal.

3. The case of the claimant is that the petitioner / claimant was working as a Dentist and was earning not less than Rs.60,000/- per month. On 25.01.2010. On 25.01.2010, at about 09.00 a.m., when the petitioner was proceeding in his Bajaj Pulsor Two Wheeler, bearing Registration No.PY-01-AS-9495, at the extreme left side of Tiruvannamalai to Polur Road, opposite to E.B.Office at Vengikkal, the driver of the Tata Ex.Turbo Mini Van, bearing Registration No.TN-25-J-0194, who has driven the vehicle, in the opposite direction, in a rash and negligent manner, dashed against the petitioner. Due to the accident, the petitioner sustained fracture on his right leg, injuries on his right eyebrow, forehead, right hand, left hand and all over the body. The petitioner was taken to the Government Hospital, Tiruvannamalai, for treatment. Thereafter, he took further treatment in C.M.C. Hospital, Vellore. Claiming compensation of a sum of Rs.20,00,000/-, the petitioner/claimant has filed a petition in MCOP No.503 of 2017 before the Motor Accidents Claims Tribunal, Tiruvannamalai.



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4. Controverting the same, the first respondent / owner of the vehicle, has filed a counter stating that the petitioner / claimant was talking in the cellphone while riding his two wheeler and he alone dashed against the vehicle, which was coming in the opposite direction. Further, the rider of the two wheeler viz., the petitioner / claimant, did not possess valid driving license at the time of accident. Hence, he is not liable to pay compensation and sought for dismissal of the claim petition.

5. The second respondent therein is the appellant herein. The second respondent / Insurance Company has filed a counter affidavit denying the allegations made by the petitioner as well as the first respondent/owner of the vehicle. The Insurance Company denied the period of treatment and the expenses incurred by the petitioner. Further, the driver of the vehicle also did not possess valid driving license at the time of accident and the said vehicle was not at all insured with them. The petitioner also did not possess valid and effective driving license to ride the motor-cycle at the time of accident. The petitioner / claimant has not included the owner and Insurance Company of the two wheeler, who are necessary



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parties to the main petition and thus, sought for dismissal of the claim petition.

6. Before the Tribunal, three witnesses were examined on the side of the petitioner / claimant as P.W.1 to P.W.3 and 23 documents were marked as Exs.P1 to P23. On the side of the respondents, four witnesses were examined as R.W.1 to R.W.4 and 25 documents were marked as Exs.R1 to R25.

7. The Tribunal, after examining the witnesses and analyzing the materials available on record, awarded a compensation of Rs.7,56,600/- (Rupees Seven Lakhs Fifty Six Thousand Six Hundred Only) with interest at the rate of 7.5% per annum from the date of petition till the date of deposit along with costs.

8. Challenging the quantum of compensation, the Insurance Company is before this Court by way of the above CMA.



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9. Not satisfying with the quantum of compensation, the petitioner / claimant has filed the Cross Objection.

10. Heard the submissions made on either side and perused the materials available on record.

11. The learned counsel for the petitioner / claimant has submitted that due to the said accident, the claimant suffered grievous injuries. But the compensation awarded by the Tribunal is inadequate and on the lesser side. The Tribunal ought to have granted adequate compensation. Hence, he prays to allow the Cross Objections.

12. The learned counsel for the appellant / Insurance Company has submitted that the Tribunal has rightly considered the materials and evidences and has awarded the just and fair compensation and hence, the same does not require any interference by this Court. Hence, he prays to set the decree and judgment dated 16.11.2017 made in M.C.O.P.No.503 of



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2017, on the file of Motor Accident Claims Tribunal (Special Sub Judge)

WEB.COM Tiruvannamalai.

13. The Tribunal adjudicated the issues with reference to the documents and evidences. The Tribunal made a clear finding that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle Tata Ex Turbo Mini Van, belonging to the second respondent / owner of the vehicle. Accordingly, the appellant / Insurance Company on behalf of the second respondent is made liable to pay a compensation to the claimant / first respondent.

14. A perusal of the records would reveal that the petitioner / claimant has not filed the claim petition properly with the separate heads in the Tribunal itself. But he claimed an overall compensation of Rs.20,00,000/-. Considering the facts and circumstances of the case and upon perusing the records, the Tribunal awarded an overall compensation of Rs.7,56,600/- with interest at 7.5% p.a., from the date of petition till the date of deposit.



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A.A.NAKKIRAN, J.

gv

15. In view of the above, nothing survives in both the Civil Miscellaneous Appeal as well as the Cross Objections and the same are accordingly dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is dismissed.

27.02.2023

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
gv

To

The Motor Accident Claims Tribunal /
Special Sub Judge (MCOP)
Tiruvannamalai.

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