



C.M.A. No. 2128 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2128 of 2018
and C.M.P. No.16632 of 2018

IFFCO - TOKIO

General Insurance Company Ltd.,

Thulsi Chambers,

3rd Floor, No.195,

T.V. Samy Road (West),

R.S. Puram, Coimbatore

... Appellant/ 2nd Respondent

Vs.

1. Selvakumar

... 1st Respondent/ Petitioner

2. P. Dharmalingam

... 2nd Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 12.07.2013 passed in M.C.O.P. No. 42 of 2012 on the file of the Chief Judicial Magistrate Court, Motor Accident Claims Tribunal, Namakkal.

For Appellant : Mr. C. R. Krishnamoorthy

For R1 : No Appearance

For R2 : Ex-parte



JUDGMENT

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This appeal has been filed by the Insurance company challenging the award passed in M.C.O.P. No. 42 of 2012, dated 12.07.2013 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Namakkal, wherein the Tribunal has directed the Insurance Company to indemnify the first respondent and to pay the compensation to the claimant.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The case of the claimant is that on 08.03.2009 about 7:40AM, the claimant was riding a Yamaha motor cycle bearing Registration No. TN-59-5359 on the Namakkal to Karur Road, while the claimant reached near MRF tyre company in Paramathi main Road, a Hero Honda Splendor Plus motor cycle bearing Registration No. TN-28-AC-4252 ridden by its rider in a rash and negligent manner, who was travelling in front of the claimant had suddenly turned on the right hand side of the road without giving any signal and noticing other vehicles, which resulted in collision of the two motor cycles, in which the claimant has sustained serious injuries. The accident



has occurred due to the negligent act on the part of the rider of the first respondent motor cycle. For the injuries sustained, the claimant has come forward with a claim petition seeking compensation for a sum of Rs.10,00,000/- under section 166 of the Motor Vehicles Act.

4. The first respondent is the owner and the second respondent is the insurer of the motor cycle bearing Registration No. TN-28-AC-4252. Before the Tribunal, the first respondent has not contested the claim and remained Ex-parte. The second respondent - insurance company filed a counter and contested that the accident was occurred due to the rash and negligent driving of the claimant and also stated that a criminal case in Cr. No.442 of 2009 U/s.279,338 IPC on the file of the Namakkal Police Station was registered against the claimant herein. The insurance company has further contended that the compensation claimed under various heads is also on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.14 were marked and on the side of the respondent, R.W.1 was examined and no exhibits were marked.



6. Based on the evidence placed on record, the Tribunal in point no.1 has held that the driver of the first respondent is responsible for the accident and both the respondents are liable to pay the compensation for the injuries sustained by the claimant. In point No.2, the Tribunal has quantified the compensation and granted Rs.4,45,524/- along with the interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the quantum of compensation awarded and the liability fixed on the insurance company, this appeal has been filed by the insurance company.

8. The learned counsel appearing for the Insurance company has submitted that immediately after the accident, a criminal case was registered against the claimant and subsequently, final report was also filed against the claimant. If the claimant has taken due care and caution, he could have avoided the accident. He has further stated that the claimant has also contributed to the accident and also contended that the compensation awarded under various heads is also on the higher side, hence prays to set



aside the award of the Tribunal.

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9. Per contra, the learned counsel appearing for the claimant has submitted that there is no contra evidence that has been recorded on the side of the Insurance Company, though the F.I.R. was registered against the claimant, it was lodged by the driver of the first respondent by suppressing the real facts. However, before the Judicial Magistrate Court, in the cross examination, the rider of the motor cycle belongs to the first respondent has admitted that he turned the motor cycle to his right hand side without any indication. Hence, finding of the fact rendered by the Tribunal is proper and prays to confirm the award passed by the Tribunal.

10. Heard the submissions made on both sides and perused the materials available on record:

11. The Ex.P.1- F.I.R. was registered immediately after the accident against the claimant herein, which was lodged on the basis of the complaint given by the driver of the first respondent which only shows that he was the driver of the vehicle at the time of accident. Before the Tribunal,



P.W.1 - claimant was examined and he has stated that he has driven the vehicle on the Namakkal to Karur road, while he reached Paramathi Main Road near MRF tyre company, suddenly the first respondent, who has ridden his two-wheeler in front of him turned right hand side in high speed, hence he was not able to pass over due to the sudden act of turning the vehicle on the right hand side by the rider of the first respondent motor cycle in the middle of the road, which resulted in accident. The claimant has also stated that F.I.R. was registered against him, which was lodged by the first respondent in his absence and he has also objected to that complaint. However, before the Judicial Magistrate Court, in the cross examination the rider of the first respondent motor cycle has admitted the fact that he turned the motor cycle to his right hand side without any indication and observing the traffic rules.

12. To disprove the evidence of P.W.1, the respondent has not produced or examined any evidence and also not come forward to file a final report. The second respondent has examined one Mr. Govindhasamy, insurance official as R.W.1, but in the cross examination, he has deposed that he was not aware about the manner in which the accident has taken



place. So, in the absence of any contra evidence to disprove the case of the claimant, the Tribunal has accepted the evidence of the claimant. Hence, this Court finds no infirmity in such finding and the same is accepted.

13. This Court in *New India Assurance Co. Ltd., Coimbatore vs. Manimaran and another [2008 (2) TNMAC 137]* and *The New India Assurance Company Limited vs. G. Vijay Kandiban and others [IV (2006) ACC 96]* has held that merely based on F.I.R, negligence cannot be fastened, since F.I.R. in accident cases is often lodged in a haste manner and the same cannot be substituted for evidence and cannot be raised to the pedestal higher than that of a statement on oath. Therefore, mere registration of F.I.R. against the claimant is not a ground to deny the compensation, unless, there is an ample evidence to prove the negligent act on the part of the claimant. Hence, this Court confirms the finding of the Tribunal that the rider of the first respondent alone is responsible for the accident.

14. With regard to the quantum of compensation, the Tribunal has awarded Rs.64,000/- for the disability sustained by the claimant based on the evidence of P.W.2 – Private Doctor and the disability certificate marked



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in Ex.P.10, which shows that the claimant has sustained 32% of disability.

The Tribunal has adopted percentage method and granted Rs.2,000/- per percentage of disability and awarded Rs.64,000/- under the head disability.

The Tribunal has awarded compensation under medical expenses for a sum of Rs.2,86,524/-, which is based on the medical bills marked as Ex.P.6. The Tribunal has also awarded loss of income during the treatment period for a sum of Rs.18,000/- by treating the treatment period for four months and fixing Rs.4,500/- per month. This Court is of the view that the compensation awarded by the Tribunal under the various heads are reasonable and there is no ground for enhancement or modification, hence, the same are hereby confirmed.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is hereby confirmed. Consequently, connected civil miscellaneous petition stands closed. No costs.

08.09.2023

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No



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To:

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Namakkal.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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