IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2393 of 2018
and
CMP.No.18155 of 2018

The General Manager,
M/s.Reliance General Insurance Co.Ltd.,
No.1st & 3rd Floor, No.23, Spur Tank Road,
Chetpet, Chennai ... Appellant

..Vs..

1.G.Vijayakumar
2.T.Kumar
3.The Divisional Manager,
United India Insurance Co.Ltd.,
Katpadi Road, Vellore. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.12.2017 made in MCOP.No.407 of 2013, on the file of the Motor Accident Claims Tribunal (Special Sub-Judge, Tirupathur).

For Appellant : Mr.S.Arun Kumar

For Respondents : Ms. M.Malar for R1

No appearance for R2 & R3

J U D G M E N T

This appeal has been filed by the Insurance Company challenging the award dated 12.12.2017 passed by the Motor Accident Claims Tribunal/ (Special Sub-Judge, Tirupathur), in MCOP No.407 of 2013.

2. The Appellant Insurance Company has challenged the award on the following grounds:

a) The Tribunal failed to note that the first respondent is not entitled to maintain the claim under Section 166 of M.V.Act since he is the tort-feasor.

b) The Tribunal erred in relying on the interested testimony of PW1 and erroneously concluded that the driver of the lorry was responsible for the accident.

c) The Tribunal failed to note that if the driver of the lorry was responsible for the accident , he would have lodged a complaint against him.

d) The Tribunal ought to have placed reliance on the MVI report and inferred the fact that accident occurred while the first respondent attempted to overtake the lorry and caused the accident to himself.

e) The Tribunal ought not to have awarded more than 'No fault liability compensation' and the quantum of compensation awarded by the Tribunal is excessive.

3. The learned counsel for the first respondent has submitted that the Tribunal after analysing the evidences on record, has rightly awarded the compensation to the claimant and hence, the award passed by the Tribunal does not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

4. The Tribunal under the impugned award has directed the Insurance Company to pay the first respondent/claimant, a compensation of Rs.2,31,886/- together with interest and costs as detailed hereunder:

Heads	***Award Amount (Rs.)***
Permanent disability	90,000/-
Pain and sufferings	20,000/-
Extra Nourishment	5,000/-
Medical Expenses	99,386/-
Attender charges	2,000/-
Loss of Income	13,000/-
Loss of Amenities	2,500/-
Total	**2,31,886/-**

5. Before the Tribunal, on the side of the claimant, two witnesses were examined as PW1 and PW2 and marked nineteen documents which were marked as Ex.P1 to Ex.P19. On the side of the respondents, two witnesses were examined as RW1 and RW2 and one document was marked as Ex.R1.

6. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel for the first respondent.

7. There is no representation for the respondents 2 and 3.

8. On perusal of records, it is seen that the Appellant/Insurance Company has not produced any evidence before the Tribunal to show that due to the negligent act of the claimant, the accident has occurred. Hence, this Court does not find any infirmity in the said finding and accordingly, the contention raised by the Appellant is rejected. Insofar as the contention raised by the Appellant with regard to the quantum of compensation awarded by the Tribunal is concerned, this Court has perused the pleadings and evidence adduced by the respective parties. In the claim petition, the first respondent/claimant has claimed that he was aged 26 years and he was a driver and Assistant of Siddha Doctor and was earning Rs.20,000/- per month. The Tribunal has assessed the monthly income of the claimant at the time of the accident as Rs.6500/-. p.m., and thus awarded Rs.13000/- towards loss of income during the period of injury. The year of the accident is 2011. Since the year of the accident is 2011, the notional income of the claimant fixed by the Tribunal at Rs.6500/- p.m., is a correct assessment. Therefore, there is no scope for interference with regard to the said assessment. The Tribunal has rightly applied the correct multiplier since the

claimant was aged 26 years at the time of the accident. The appellant has miserably failed to prove the contention based on the documentary evidence.

9. For the foregoing reasons, there is no merit in this appeal. Accordingly, this appeal is 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.407 of 2013 within a period of four 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. Consequently, connected miscellaneous petition is closed**.** No costs.

06.02.2023

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

To

1.The Motor Accident Claims Tribunal
(Special Sub-Judge, Tirupathur).

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

A.A.NAKKIRAN, J.

gv

C.M.A.No.2393 of 2018
and
CMP.No.18155 of 2018

06.02.2023