



C.M.A.No.2316 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.07.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.2316 OF 2018

and

C.M.P.No.17693 of 2018

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The Branch Manager,
The National Insurance Company Ltd.,
J.N.Street, Pondicherry.

.. Appellant

Vs.

1. V.Manikandan

2. S.Sekar

3. A.Ramesh

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Award and decree dated 20.06.2017 made in M.C.O.P.No.120 of 2013 on the file of the Motor Accidents Claims Tribunal, (III Additional District Court), Kallakurichi .

For appellant : Mr.S.Vadivel

For respondents: R-2 and R-3 - Notice dispensed with
Mr.D.Balachandran for R-1

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JUDGMENT

This appeal is filed by the Insurance Company challenging the Award passed by the Tribunal.

2. On 27.12.2008 at about 11 a.m., when the claimant was travelling in Hero Honda bike bearing Registration No.TN-32-R-8556 on Trichy-Chennai National Highways Road, near Veppur bridge, a Bajaj two-wheeler bearing Registration No.TN-31-J-7342 came in the opposite direction and dashed against the vehicle of the claimant, thereby, causing grievous injuries all over the body of the claimant.

3. Learned counsel for the appellant/Insurance Company submitted that the claimant is the injured and he himself is a tort-feasor, and therefore, the insurer is not liable to pay any compensation.

4. Learned counsel for the appellant/Insurance Company further



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submitted that the Tribunal has not given any reason and not even stated as to what is the nature of the injuries and simply awarded the compensation, which could not be termed as 'just compensation' and the compensation so awarded by the Tribunal is exorbitant.

5. Learned counsel for the first respondent/claimant submitted that the claimant is none other than the eye-witness himself as well as the injured and the accident had occurred due to rash and negligent driving of the rider of the Bajaj two-wheeler and the claimant is not a tort-feasor, and therefore, the liability has been rightly fixed on the appellant-Insurance Company by the Tribunal.

6. As far as the quantum of compensation is concerned, learned counsel for the first respondent/claimant submitted that the compensation awarded by the Tribunal is not the 'just compensation'.

7. Heard both sides and perused the materials available on record.



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8. The points for determination in this appeal are:

(i) Whether the claimant himself is a tort-feasor and liable for the accident ?

(ii) Whether the appellant/Insurance Company is liable to pay the compensation awarded by the Tribunal ? and

(iii) Whether the compensation awarded by the Tribunal reflects the 'just compensation' or it is exorbitant.

9. Though the learned counsel for the appellant/Insurance Company vehemently contended regarding the negligence of the claimant himself and their liability to pay the compensation, a perusal of the materials available on record shows that the accident had occurred only due to the rash and negligent driving of the rider of the Bajaj two-wheeler, but not due to the negligence on the part of the claimant who rode his two-wheeler. In the claim petition itself, the claimant has clearly stated that he is the injured as well as the eye-witness and in his evidence, he had spoken about the accident and the manner of the accident and on whose negligence the accident has taken place.

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10. The appellate Court is the final fact finding Court and the appellant Court will always have to re-appreciate the evidence and particularly, this Court finds that the accident had occurred due to rash and negligent driving of the Bajaj two-wheeler which was driven by its rider in a rash and negligent manner, causing the accident and resulting in the claimant/injured sustaining injuries.

11. On an analysis of the evidence on record, this Court is of the irresistible conclusion that it is the rider of the said Bajaj vehicle which had caused the accident and the claimant had driven his vehicle by following the relevant Rules.

12. Thus, as the insurer of the Bajaj two-wheeler, the appellant/Insurance Company is liable to pay the compensation. Moreover, the appellant has not denied their liability to pay the compensation, more particularly, the coverage of the insurance, as also the possession of the licence by the rider of the Bajaj two-wheeler. In the

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case on hand, there is no violation of the insurance policy and in the said circumstances, this Court finds that the appellant/Insurance Company is liable to pay the compensation.

13. As far as the quantum of compensation is concerned, the Tribunal has not given any specific reason for awarding the compensation under the relevant heads and the Tribunal, on its own, had created some heads under which the compensation should be awarded. There is no reason assigned by the Tribunal. However, the accident in question and the liability of the appellant/Insurance Company to pay the compensation is also admitted.

14. The Tribunal, without evidence on record, has awarded Rs.1,00,000/- under the head "loss of amenities and enjoyment in life", as also under the head "permanent discomfort" at Rs.1,00,000/- and the same are unwarranted.



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15. As the amounts awarded by the Tribunal under the above two heads, are exorbitant and do not reflect the 'fair and just compensation', the same are hereby set aside.

16. The amounts awarded by the Tribunal under the other heads are just and fair and the same are not exorbitant and are awarded based on the evidence, and hence, the same are hereby confirmed.

17. With regard to the contention raised by the learned counsel for the appellant/Insurance Company that the claimant himself is a tort-feasor, this Court, from the evidence on record by the claimant and also himself being the eye-witness, is of the view that the claimant is not the tort-feasor and it is only the Bajaj two-wheeler which came from the opposite direction and hit the vehicle of the two-wheeler, who had driven his vehicle by following the relevant Rules, and the said Bajaj two-wheeler's driver, was the sole cause of the accident

18. In the result, while answering the points in the above terms,

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the impugned Award of the Tribunal is reduced from Rs.6,43,000/- to Rs.4,43,000/- (Rupees four lakhs and forty three thousand only). The appellant/Insurance Company is directed to deposit the above reduced Award amount along with interest @ 7.5% per annum from the date of claim petition till the date of deposit, with costs awarded by the Tribunal, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

19. On such deposit being made, the Tribunal is directed to calculate the above said compensation including the interest, costs, etc., after adjusting the amount if any already withdrawn by the claimant and credit the actual amount of compensation in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

20. The appellant/Insurance Company is permitted to withdraw the excess amount , if any already deposited by them before the Tribunal.



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WEB COPY 21. In other respects, the impugned Award of the Tribunal is hereby confirmed.

22. With the above observations and directions, this appeal is partly allowed, without costs. Consequently, the miscellaneous petition is closed.

24.07.2023

CS

To

1. The Motor Accidents Claims Tribunal,
(III Additional District Court), Kallakurichi.
2. The Section Officer, V.R.Section, High Court, Madras.



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P.VELMURUGAN, J

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