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CMA.No.2374 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.2374 of 2018
CMP.No.18068 of 2018

The United India Insurance Company Limited
Divisional Office, Tiruppur

Appellant

Vs

1. P.Ramani
2. J.V.Tapes

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 17.11.2017, made in MCOP.No.148 of 2014, by the I Additional District Court (MACT) Tiruppur.

For Appellant : Ms.I.Malar

For Respondents : Mr.S.S.swaminathan-R1
R2-No Appearance

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 17.11.2017, made in MCOP.No.148 of 2014, by the I Additional District Court (MACT) Tiruppur.

2. The 1st Respondent herein, has filed the claim petition before the Tribunal, seeking a compensation of Rs.10,00,000/- on various heads, for the injuries sustained by him, in a motor road accident, which took place on 04.01.2014.

The claim petition was resisted, on various grounds, by the Appellant



CMA.No.2374 of 2018

WEB COPY

Insurance Company, by filing a counter. The 2nd Respondent, owner of the offending vehicle remained exparte. On the side of the claimant, PW.1 to PW.3 were examined and Ex.P1 to Ex.P21 were marked. On the side of the Insurance Company, RW.1 was examined and Ex.R1 was marked.

3. Finding that the claimant sustained injuries in the alleged motor road accident due to the rash and negligent driving of the driver of the offending Eicher Van, belonging to the 2nd Respondent, the Tribunal has awarded a total compensation of Rs.4,22,000/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, with costs, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Disability	60000.00
2	Pain and Suffering	25000.00
3	Medical Expenses	307000.00
4	Attendants Charges	10000.00
5	Transportation Expenses	10000.00
6	Nutrition	10000.00
Total Compensation		422000.00

Aggrieved by the quantum of compensation, this appeal has been filed by the Appellant/ Insurance Company.

4. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
5. According to the claimant, on 04.01.2014 at about 08.30 hours, when the claimant, who was aged 26 years old at that time, was riding his Hero Honda CD 100 Bike, bearing Reg.No.TN 39 Q 1203, on Perumanallur to Kunnathur Main Road, near Velliyamalayam Bus Stop, Tiruppur, from North to South



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direction, one Eicher Van, bearing Reg.No.TN 39 AX 3623, belonging to the 2nd Respondent, driven by its driver, in a rash and negligent manner, suddenly stopped by application of sudden brake, due to which, the claimant could not control his bike and hit against the back side of the Eicher Van and fell down and sustained grievous injuries on right face, right knee, right condyle of mandible, right parasymphysis head injury and injuries all over the body, for which he filed the claim petition.

6. According to the learned counsel for the Appellant, the claimant was also responsible for the accident due to his rash and negligent driving and hence, the Tribunal ought to have applied the theory of contributory negligence to both the claimant and the driver of the Eicher Van.
7. According to the learned counsel for the 1st Respondent, the accident had occurred only due to the rash and negligent driving of the driver of the offending Eicher Van and hence, the impugned award is just and proper.
8. There is no quarrel over the compensation awarded by the Tribunal. However, on considering the submissions of the learned counsel on either side, this Court is of the view that the only issue to be considered is as to whether the principles of contributory negligence can be applied.
9. The Tribunal found, based on the entire evidence, that the accident had occurred due to the rash and negligent driving of the driver of the offending Van. But, even according to the claimant and as seen from the claim petition, due to sudden impact, the claimant could not control his bike and hit against



CMA.No.2374 of 2018

WEB COPY

the back side of the Eicher Van. Hence, the Tribunal ought to have applied the theory of contributory negligence on both the claimant and the driver of the offending Vehicle. Therefore, this Court holds that both the driver of the offending Eicher Van and the claimant were responsible for the alleged accident to an extent of 80% and 20 % respectively and accordingly, finds it appropriate to apportion the negligence in the ratio of 80:20 as against the driver of the Eicher Van and the claimant respectively.

10. In view of the apportionment of negligence on the driver of the offending Eicher Van to an extent of 80%, the total compensation payable to the claimant by the Appellant would come to Rs.3,37,600/-.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.3,37,600/- (Rupees three lakhs thirty seven thousand six hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation. The Appellant is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the entire award amount, with interest, by filing proper application. No costs. Consequently, the connected MP is closed.

10.04.2023

Index:Yes/No



CMA.No.2374 of 2018

Web:Yes/No
Speaking/Non Speaking
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WEB COPY



CMA.No.2374 of 2018

A.A.NAKKIRAN, J.

Srcm

To

1. I Additional District Court (MACT) Tiruppur
2. The Record Keeper, VR Section, High Court, Madras

CMA.No.2374 of 2018

10.04.2023