



WEB COPY



CMA.Nos.2765 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.2765 of 2022
& CMP No.21573 of 2022

United India Insurance Company Limited
Nethaji Bye Pass Road,
Dharmapuri-636 701

.... Appellant

Vs

1.Kannammal
2.Ponmudi Krishnan

...Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 07.02.2014, made in MCOP.No.440 of 2008, on the file of the MACT (Sub-Court) at Dharmapuri.

For Appellant : Mrs.I.Malar

For Respondents : Mr.V.Kumaravelan, for R1

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the Appellant Insurance Company, against the judgement and decree, dated,



CMA.Nos.2765 of 2022

WEB COPY

07.02.2014, made in MCOP.No.440 of 2008, on the file of the
MACT(Sub-Court) at Dharmapuri.

2. The above claim petition has been filed before the Tribunal, seeking a compensation of Rs.7,00,000/- on various heads, for the injuries sustained by the first respondent, in a motor road accident, which had happened on 10.07.2006, when the injured, who is the first respondent was travelling as a pillion rider of the two wheeler, namely, TVS 50 XL bearing no.TN 29 E 6154, at that time, the second respondent herein came in the opposite direction in a rash and negligent manner and dashed against the two wheeler, as a result of which, the claimant sustained injuries.

3. The claim petition was resisted, on various grounds, by the appellant/ Insurance Company, by filing a counter. On the side of the claimant, PW.1 and PW.2 were examined and Ex.P1 to Ex.P5 were marked. It is categorically stated by PW1 in his deposition that the accident occurred due to the rash and negligent driving of the rider of the two wheeler TVS



CMA.Nos.2765 of 2022

Super Excel bearing registration no.TN26AA2471.

WEB COPY

4. Finding that the accident had occurred only due to the rash and negligent driving of the second respondent, the second respondent being the owner and insurer of above said TVS Super Excel, the Tribunal has awarded compensation amount of Rs.1,98,000/-, on various heads with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be payable by the Appellant Insurance Company. Aggrieved by the quantum of compensation, this appeal has been filed by the Appellant Insurance Company.

5. This Court heard the learned counsel for the Appellant and the contesting Respondent, considered their submissions and also perused the entire materials placed on record.

6. After hearing the learned counsel on either side elaborately, in this appeal, there is no dispute about the factum of the accident. However, the main issue raised by the learned counsel for the Appellant is only with regard to



WEB COPY

the findings of the Tribunal in respect of negligence aspect and fixation of liability on the Appellant Insurance Company, by the Tribunal.

7. In the present case, there were two persons travelling in the two wheeler and the rider of the two wheeler and a pillion rider had sustained injuries.
8. According to the claimant, the accident had occurred, when the injured first respondent was travelling as a pillion rider in the two wheeler bearing no.TVS 50 XL bearing no.TN 29 E 6154, the second respondent, who was the rider of a two wheeler TVS Super Excel bearing registration no.TN26AA2471 came in the opposite direction in a rash and negligent manner and dashed against the two wheeler.
9. According to the learned counsel for the Appellant, in the present case, the accident is occurred due to the negligence on the part of the rider of the two wheeler bearing TVS 50 XL bearing no.TN29 E 6154, but the Tribunal has erroneously fastened the liability on the rider of the two wheeler which was insured with the appellant Insurance company and



hence, the same is liable to be set aside.

WEB COPY

10.The learned counsel for the first respondent would submit that to establish the case of the Appellant Insurance Company, no one was examined and under these circumstances only, the Tribunal has come to the conclusion after considering the evidence and deposition of Pws.1 & 2 and rightly fastened the liability on the part of the Appellant Insurance Company, as stated above.

11.This Court considered the submissions of the learned counsel on either side and perused the deposition of PW1 & 2 as well as Exs.P1 to P5 and it is seen that the accident had occurred due to the rash and negligent driving of the rider of the two wheeler TVS Super Excel bearing registration no.TN26AA2471. Further, the Insurance Company was not able to cull out anything from the evidence of PWs1 and 2, who have categorically deposed that the accident had occurred due to the rash and negligence driving on the part of the rider of the two wheeler TVS Super Excel bearing registration no.TN26AA2471. In order to nullify the version



WEB COPY

of Pws.1 and 2 as well as the FIR, the appellant/Insurance Company was not able to cull out anything from their cross-examination. Further, to prove and substantiate their stand, the appellant Insurance Company has not filed any documents nor examined any person including the rider of the two wheeler, namely, the second respondent. Thus, taking note of the same, the Tribunal has rightly fastened the entire liability on the appellant Insurance Company. Therefore, this Court does not find any error or infirmity in the impugned award of the Tribunal, fastening the liability on the part of the Appellant Insurance Company. There is no merit in the appeal and hence, the award is liable to be confirmed.

12.As far as the compensation is concerned, the Tribunal awarded the compensation on the following heads:

Permanent disability	Rs.1,62,000/-
Pain & Sufferings	Rs.10,000/-
Loss of Income	Rs.6000/-
Medical Expenses	Rs.10,000/-
Extra nourishment	Rs.5000/-
Transport charges	Rs.5000/-
Total	Rs.1,98,000/-

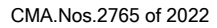


WEB COPY

13. A perusal of Ex.P2 Wound Certificate would show that the first respondent/claimant sustained following injuries:

- (i) Sustained contusion and abrasion in the right leg around 5x5cm in bone depth
- (ii) Contusion on fore arm around 4x4cm in bone depth with bone fracture; and
- (iii) Tenderness over the center on the chest

14. It is noticed that the petitioner/PW1 has sustained grievous injuries due to the accident. The Doctor/PW.2 who treated PW.1 and issued disability certificate stating that the injured/claimant had sustained 45% disability whereas, the Tribunal has fixed the disability at 30% and awarded compensation accordingly. Considering the nature of injuries, the Tribunal awarded compensation in various heads which appears to be just and reasonable. However, on behalf of the appellant/Insurance Company, it is contended that the functional disability fixed by the Tribunal is on the higher side.



16. Accordingly, this Civil Miscellaneous Appeal is dismissed. The appellant/insurance company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, if any, within a period of 6 weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.440 of 2008 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Dharmapuri. Upon such deposit, the Tribunal is directed to transfer the award amount to the bank account of the claimant by way of RTGS, within a period of 3 weeks from the date of deposit and from the date of receipt of the Bank details obtained for the claimant or application for withdrawal from the claimant, whichever is earlier. No costs. Consequently, connected Miscellaneous Petition is



closed.

WEB COPY



CMA.Nos.2765 of 2022

28.02.2024

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking
dn

To

1. The . MACT(Sub-Court) at Dharmapuri
2. The Record Keeper, VR Section, High Court, Madras

KRISHNAN RAMASAMY.J.,



WEB COPY



CMA.Nos.2765 of 2022

dn

CMA.Nos.2765 of 2022

28.02.20240