



CMA.No.1417 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.1417 of 2020

and

CMP.No.10451 of 2020

The Branch Manager,
Reliance General Insurance Company Ltd.,
Dhanam Towers, 1st Floor, No.1, Binny Main Road,
Park road street, Tiruppur – 641 601.

...Appellant

Vs.

1. T.Krishnamoorthy

2. C.Kannan

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the decree and judgment dated 24.04.2019 passed in MCOP.No.917 of 2017 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruppur.

For Appellant : Ms.C.Bhuvanasundari

For Respondents : Mr.K.Myilsamy, for R1
: Notice dispensed with, for R2



CMA.No.1417 of 2020

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JUDGMENT

Challenging the award dated 24.04.2019 passed in MCOP.No.917 of 2017 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruppur, the appellant-insurer has come up with this appeal.

2. It is the case of the 1st respondent/claimant that, on 23.08.2016 at about 19.00 hours, when he was standing in the Somanur to Madhapur Road, near Meenambika Theatre, Karumathampatty, at that time the appellant insured vehicle bearing Regn.No.TN-37-CY-9310 owned by the 2nd respondent driven by its driver came from west to east direction in a rash and negligent manner and dashed against the 1st respondent/claimant, due to which, he sustained grievous injuries all over his body and got admitted in the hospital. Thereby, the 1st respondent/claimant filed a claim petition claiming a compensation of Rs.16,00,000/-. Before the tribunal, the 1st respondent/claimant examined two witnesses viz., P.W.1 and P.W.2 and marked exhibits P.1 to P.5 and on the side of the appellant, one witness viz., R.W.1 was examined and exhibits R.1 and R.2 were marked. After trial, the tribunal arrived at a conclusion that the



CMA.No.1417 of 2020

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accident happened solely due to the rash and negligent driving on the part of the driver of the appellant insured vehicle and awarded a sum of Rs.10,98,600/- towards compensation for the injuries sustained by the 1st respondent/claimant and directed the appellant to pay the entire compensation in favour of the 1st respondent. Challenging the same, the appellant-insurance company has come up with this appeal.

3. Learned counsel for the appellant-insurance company contended that, the tribunal had fastened the entire liability as against the appellant-insurer merely because the FIR came to be registered as against the driver of the appellant insured vehicle. However, it is pertinent to note that, FIR is not a substantive document and whatever is spoken in the FIR need not be taken at its face value and the FIR may not and need not contain all the details and it is settled law that FIR is not a conclusive proof nor is an encyclopedia for deciding the case and it is only to set the criminal law in motion and thereby, the same cannot be a basis to fasten the entire liability as against the appellant-insurer. Further, the driver of the appellant insured vehicle did not possess valid Driving license at the time of accident, which is a clear violation of policy condition and necessarily



CMA.No.1417 of 2020

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the appellant-insurer has to be exonerated. Learned counsel further submitted that, though the claimant claimed that at the time of accident he was aged about 53 years and was employed as Power loom Operator and was earning a sum of Rs.15,000/- per month and due to the injuries sustained by him, he is unable to continue his avocation which he was carrying on before the accident, however, in order to prove the same, no documentary evidence has been produced by the claimant. While such being the case, the tribunal without any concrete proof, had fixed the monthly income of the claimant as Rs.11,000/- and by adopting multiplier method had awarded a compensation of Rs.7,98,600/- under the head loss of income, which is wholly unsustainable. Further, the compensation awarded under the other heads are also on higher side and the same has to necessarily be interfered with. Accordingly, she prayed for appropriate orders.

4. Per contra, learned counsel appearing on behalf of the 1st respondent submitted that, by considering all the relevant documents, the Tribunal passed the present impugned award, which cannot be said to be erroneous. Accordingly, he prayed for dismissal of the appeal.



CMA.No.1417 of 2020

WEB COPY

5. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. The major grievance of the appellant is that the driver of the appellant insured vehicle did not possess valid driving license at the time of the accident, which is a clear violation of policy conditions, however, the tribunal had fixed the entire liability as against the appellant, which is not sustainable and even the right of recovery was not granted to the appellant although the driver was not holding a valid driving license.

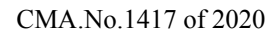
7. In this context, this Court perused the materials available on record particularly the impugned award. Though, it is the claim of the appellant that the driver of the appellant insured vehicle did not possess valid driving license, however, in order to substantiate its claim, no individual eye witness has been examined by the appellant/insurance company. Even the transport official, who was examined as R.W.1 before the tribunal on the side of the appellant-insurance company had deposed that, he was unable to ascertain as to whether the driver of the appellant



CMA.No.1417 of 2020

insured vehicle possessed valid driving license or not. In such circumstance, in the absence of any individual witness, the tribunal had rightly fixed the entire liability as against the appellant and refused to order for pay and recovery, in which this Court does not find any fault with.

8. Insofar as the quantum of compensation fixed by the tribunal is concerned, the tribunal had awarded a sum of Rs.50,000/- under the head Discomfort, which is not sustainable, as already a sum of Rs.1,00,000/- has been awarded under the pain and sufferings. Hence, this Court is inclined to set aside the same. Insofar as the compensation awarded by the tribunal under the other heads are concerned, this Court is of the view that, on the basis of proper appreciation and reasoning and also by considering the nature of injuries sustained by the 1st respondent/ claimant, the tribunal had awarded the compensation and by no stretch the same could be said to be excessive or disproportionate. Therefore, this Court is not inclined to interfere with the same.



<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of income	7,98,600/-	7,98,600/-
Pain and suffering	1,00,000/-	1,00,000/-
Extra nourishment	50,000/-	50,000/-
Attender charges	25,000/-	25,000/-
Transportation	15,000/-	15,000/-
Medical expenses	60,000/-	60,000/-
Discomfort	50,000/-	-
Total	10,98,600/-	10,48,600/-

10. Accordingly, this Civil Miscellaneous appeal stands allowed in part and the impugned award of the Tribunal is modified by reducing the compensation amount from **Rs.10,98,600/-** to **Rs.10,48,600/-**. The appellant/Insurance company is directed to deposit the said amount to the credit of MCOP.No.917 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of



CMA.No.1417 of 2020

this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the 1st respondent/claimant through RTGS within a period of two (2) weeks thereafter. If any excess amount is deposited by the appellant/insurance company, it is at liberty to withdraw the same by way of filing necessary application. There shall be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is closed.

12.11.2024

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NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

The Motor Accident Claims Tribunal,
II Additional District Court,
Tiruppur.



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CMA.No.1417 of 2020

M.DHANDAPANI, J.

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