IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.1702 and 1703 of 2020
And
C.M.P.Nos.12534 and 12538 of 2020
And
Cross Objection Nos.11 and 12 of 2022

C.M.A.Nos.1702 and 1703 of 2020:

United India Insurance Company Ltd.,
Divisional Office – 1,
No.104 A, Peramanur Main Road,
Salem – 7. ... Appellant in both the C.M.As.

Vs.

1.Ajithkumar ... Respondent in C.M.A.1702/2020
1.Asokan ... Respondent in C.M.A.1703/2020
2.Karan S Arora ... Respondent in both the C.M.As.

Common Prayer:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 10.03.2020 made in M.C.O.P.Nos.2017 of 2017 and 2016 of 2017 respectively, on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.1), Salem.

For Appellant : Mr.D.Bhaskaran
For Respondents : Ms.L.Manisha
for M/s.SP.Yuaraj

Cross Objection Nos.11 and 12 of 2022:

1.Ajithkumar ... Cross Objector in Cross Obj.11/2022
2.Asokan ... Cross Objector in Cross Obj.12/2022

Vs.

1.Karan S Arora

2.United India Insurance Company Ltd.,
Divisional Office – 1,
No.104 A, Peramanur Main Road,
Salem – 7. ... Respondents in both the Cross Objs.

Common Prayer:

Cross Objections filed under Order XLI Rule 22 of Civil Procedure Code, to enhance the award amount dated 10.03.2020 in M.C.O.P.Nos.2017 of 2017 and 2016 of 2017 respectively, on the file of Motor Accidents Claims Tribunal and Special Sub Court No.1, Salem.

For Cross Objectors : Ms.L.Manisha
for M/s.SP.Yuaraj
For Respondents : Mr.D.Baskaran for R2

COMMON JUDGMENT

The civil miscellaneous appeals as well as the cross objections have been filed against the judgment and decree dated 10.03.2020 in M.C.O.P.Nos.2017 of 2017 and 2016 of 2017 respectively, on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.1), Salem.

2.The second respondent before the Motor Accident Claims Tribunal is the appellant in the civil miscellaneous appeals (hereinafter referred to as 'Insurance Company') and the respective petitioners before the Motor Accident Claims Tribunal are the cross objectors in the cross objections (hereinafter referred to as 'claimants').

3.The brief facts of the case is that on 10.01.2017 at about 9.15a.m., Ajithkumar (claimant in M.C.O.P.No.2017 of 2017) was riding a motorcycle bearing Registration No.TN 30 BD 3381 along with his friend Asokan (claimant in M.C.O.P.No.2016 of 2017) as pillion rider in Salem to Yercaud Main Road, Kondappanaickenpatti Bus Stop in front of Syndicate Bank. At that time, the motorcycle bearing Registration No.TN 30 C 3120 which came in a rash and negligent manner, dashed against the motorcycle driven by the claimant, due to which, the claimants sustained injuries.

4.Thereafter, the injured claimants/ respective first respondent in the civil miscellaneous appeals/ cross objectors in cross objections filed claim petition before the Motor Accident Claims Tribunal, claiming compensation of Rs.30 Lakhs and Rs.10 Lakhs respectively.

5.After adjudication, the Motor Accident Claims Tribunal, awarded a sum of Rs.8,75,108/- and Rs.42,088/- respectively, as compensation to the claimants and directed the Insurance Company to pay the compensation amount with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit with costs.

6.Before the Tribunal, the claimants examined themselves as P.W.1 and P.W.2 respectively and marked Ex.P1 to Ex.P.16. The Insurance Company examined D.W.1 and D.W.2/ Insurance Company official and marked Ex.D1. Further Court exhibits Ex.C1 and Ex.C2 and Witness exhibit Ex.W1 were also marked.

7.The learned counsel appearing for the Insurance Company submitted the Insurance Company has preferred the appeals questioning the negligence aspect and further submitted that though the law enforcing agency registered case against the driver of the vehicle insured with the Insurance Company, after investigation, they arrived at a conclusion that the accident happened due to the rash and negligent driving of the claimant in M.C.O.P.No.2017 of 2017 and closed the case of mistake of fact and in order to prove the same, Ex.W1 was marked, however, the Tribunal accepted the evidence let in by P.W.1 and P.W.2 and passed award, which is not sustainable one.

8.Per contra, the learned counsel appearing for the Cross Objectors submitted that in order to prove the case, the claimants examined themselves as P.W.1 and P.W.2 respectively and marked Ex.P1 to Ex.P.16 and further submitted that after elaborately discussing the factual aspects, the Tribunal fixed the entire liability on the part of the driver of the vehicle insured with the Insurance Company, which warrants no interference.

9.The learned counsel appearing for the Cross Objectors further submitted that the accident is of the year 2017. At the relevant point of time, Rs.7,000/- was awarded for per percentage of disability, however, the Tribunal awarded only Rs.3,000/- per percentage of disability and awarded compensation, which is very meagre. Hence, the claimants are entitled for enhancement in compensation.

10.Heard the learned counsel appearing for the Insurance Company as well as the learned counsel appearing for the Cross

Objectors and perused the materials available on record.

11.The accident is not disputed. In order to prove the case, the claimants examined themselves as P.W.1 and P.W.2 respectively and marked Ex.P1 to Ex.P.16 before the Tribunal. Though the Insurance Company examined D.W.1 and D.W.2, they are not eye witnesses. Though Ex.W1 – Final report, rough sketch, observation mahazer, motor vehicle inspection report of the subject vehicles, RCS notice, was marked by the Insurance Company, they are piece of criminal case records and they are not supported by any independent eye witness. In the absence of any independent eye witness, the Tribunal arrived at a conclusion that due to the rash and negligent driving of the driver of the vehicle insured with the Insurance Company, the accident happened. Hence, the appellant Insurance Company questioning the negligence aspect is not sustainable one.

12.Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects has awarded the compensation which is just and reasonable and the same warrants no interference.

13.The civil miscellaneous appeals as well as the cross objections are dismissed. The judgment and decree dated 10.03.2020 in M.C.O.P.Nos.2017 of 2017 and 2016 of 2017 respectively, on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.1), Salem, is confirmed. No costs. Consequently, the connected miscellaneous petitions are closed.

21.11.2024

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

To

1.The Motor Accidents Claims Tribunal
(Special Sub Court No.1), Salem.

M.DHANDAPANI,J.
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And
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