



CMA.No.589 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM

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

CMA.No.589 of 2021

and

CMP.No.3612 of 2021

The Royal Sundaram Alliance Insurance Co. Ltd.,
Registered Office Sundaram Towers,
45 & 46, Whites Road,
Chennai – 600 014.

...Appellant

Vs.

1. M.Muniraj

2. A.P.Gunasekaran

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and decree dated 28.02.2019 passed in MCOP.No.3391 of 2013 on the file of the Court of Special Sub Judge (M.A.C.T), Krishnagiri.

For Appellant : Mr.G.Vasudevan

For Respondents : Mr.D.Rajagopal, for R2
: No Appearance, for R1



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JUDGMENT

Challenging the award and decree dated 28.02.2019 made in MCOP.No.3391 of 2013 on the file of the Court of Special Sub Judge (M.A.C.T), Krishnagiri, the appellant-insurer has come up with this appeal.

2. It is the case of the 1st respondent/claimant that, on 21.06.2010 at about 17.00 hours, when the 1st respondent/claimant was riding a Suzuki Max 100 R Motor cycle bearing Regn.No.TN-29-S-8665 from Kamaandhoddi to Hosur, near Gopasandiram Koil Diversion Road, when he stopped the vehicle on the left mud portion of the road to attend the phone call, at that time, a car bearing Regn.No.KA-03-MD-754 owned and driven by the 2nd respondent, insured with the appellant herein came in a rash and negligent manner and dashed on the backside of the above said Motor cycle and due to the impact, the 1st respondent sustained grievous injuries and got admitted in the hospital. Thereby, the 1st respondent filed a claim petition claiming a compensation of Rs.10,00,000/-. Before the Tribunal, the 1st respondent/claimant examined himself as P.W.1 and marked exhibits P.1 to P.7 and on the side



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of appellant, two witnesses viz. R.W.1 and R.W.2 were examined and exhibits R.1 to R.4 were marked and the Disability certificate of the 1st respondent issued by the medical board was marked as Court document Ex.C.1. After trial, the Tribunal, on appreciation of oral and documentary evidence came to the conclusion that the accident had happened only because of the rash and negligent driving on the part of the 2nd respondent and awarded a sum of Rs.2,18,300/- towards compensation in favour of the 1st respondent/claimant, payable by the appellant / insurance company. Aggrieved by the same, the appellant has come up with this appeal.

3. Learned counsel for the appellant/Insurance company submitted that, at the time of accident, the 1st respondent/claimant was not in possession of valid driving license which is a clear violation of policy conditions and necessarily the appellant-insurer has to be exonerated and the injuries sustained by the 1st respondent/claimant are not grievous in nature, for which, the compensation of Rs.2,18,300/- awarded by the tribunal is on the higher side and the same has to necessarily be interfered with. Further, though the 1st respondent took pains to produce



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the driving license of the 2nd respondent/owner cum driver of the appellant insured vehicle, he chose not to produce his own driving license. Learned counsel further submitted that, there was a huge delay of 33 days in lodging the complaint which casts doubt as to whether the entire case is foisted solely for the purpose of extracting compensation amount and it is pertinent to note that, the police officials, after investigation filed a final report holding that no case was paid out for further investigation and closed the same as mistake of fact and thereby, the 1st respondent/claimant is not entitled for even a penny. However, the Tribunal lost sight of the said fact and fastened the entire liability as against the appellant-insurer, which is not sustainable. Learned counsel lastly submitted that, the percentage of interest fixed at 9% is also higher and the same has to be reduced. Accordingly, he prayed for appropriate orders.

4. On the above said contentions, heard the learned counsel appearing on behalf of the 2nd respondent and perused the material documents placed on record.



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5. The court perused the materials available on record, particularly the impugned award and it is seen that, the 1st respondent/claimant had stopped his vehicle on the left side of the road and was talking over phone and it is nobody's case that the 1st respondent was riding the two wheeler while talking on phone. While so, the 2nd respondent/owner cum driver of the appellant insured vehicle, who was coming behind had ample time to notice the parked vehicle in front of him and turn to his right a little in order to avoid collision. Further, when the 1st respondent/claimant examined himself as P.W.1 and clearly deposed the manner in which the accident had happened and stated that the accident had happened solely due to the rash and negligent driving on the part of the 2nd respondent, in order to disprove the same, no individual witness has been examined by the appellant-insurer and the appellant had miserably failed to examine even the 2nd respondent/owner cum driver to show that there was any vehicle in front of the 2nd respondent, which prevented him from taking a little right so as to avoid the collision with the 1st respondent. Hence, this Court is of the view that, in the absence of any contra evidence, the Tribunal based on the materials placed before it, has given a detailed findings with regard to the manner in which the accident



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has happened and how the 2nd respondent/owner cum driver was solely responsible for the same and thereby, this Court is not inclined to interfere with the negligence and liability fixed by the tribunal.

6. With regard to quantum of compensation, it is the claim of the appellant that the compensation awarded by the Tribunal is highly excessive which requires reconsideration. In this regard, this Court perused the impugned award passed by the Tribunal and upon perusal of the impugned award, this Court is of the view that, by no stretch the compensation awarded by the tribunal could be said to be excessive or disproportionate. Therefore, this Court is not inclined to interfere with the same.

7. At the same time, it has been the consistent view of this Court that, an award of interest at 7.5% would be just and reasonable for the accident which has happened in the year 2010 and thereby, the interest of 9% awarded by the tribunal is modified and the compensation fixed by the tribunal at Rs.2,18,300/- will carry interest at the rate of 7.5% per annum from the date of petition till the date of realization.



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8. Accordingly, this Civil Miscellaneous Appeal stands allowed in part, by modifying the interest rate fixed by the tribunal from **9% to 7.5% per annum**, while confirming the award passed by the Tribunal and the appellant-insurer is directed to deposit the compensation of Rs.2,18,300/- awarded by the tribunal to the credit of MCOP.No.3391 of 2013 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 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. No costs. Consequently, the connected miscellaneous petition is closed.

03.12.2024

skt

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



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M.DHANDAPANI, J.

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To:

1. The Motor Accident Claims Tribunal,
Court of Special Sub Judge, Krishnagiri.
2. The Section Officer,
VR Section, High Court of Madras.

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and
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