



CMA.Nos.2769 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.2769 of 2022
& CMP No.21580 of 2022

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

.... Appellant

Vs

1.Chinnasamy
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.204 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,



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07.02.2014, made in MCOP.No.204 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.2,39,600, 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, as a rider of a two wheeler, was riding TVS 50 XL bearing no.TN 29 E 6154, at that time, the second respondent, while riding 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, 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 had occurred due to rash and negligent driving of the rider of the two wheeler



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TVS Super Excel bearing registration no.TN26AA2471.

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4. Finding that the accident had occurred only due to 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 at a sum of Rs.2,39,600/-, 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 the findings of the Tribunal in respect of negligence aspect and fixation of



liability on the Appellant Insurance Company, by the Tribunal.

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7. In the present case, there were two persons travelling in two wheelers 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 in 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 injured claimant 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.



10.The learned counsel for the first respondent/claimant 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. It is seen that the accident had occurred due to 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 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 of Pws 1 and 2 as well as the FIR, the appellant/Insurance Company was not able to cull out anything during their cross-examination. Further, to prove and



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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 this 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.2,01,600/-
Pain & Sufferings	Rs.10,000/-
Loss of Income	Rs.8000/-
Medical Expenses	Rs.10,000/-
Extra nourishment	Rs.5000/-
Transport charges	Rs.5000/-
Total	Rs.2,39,600/-

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



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- (i) Sustained contusion wound over the right clavicle region about 5x5cm
- (ii) Contusion over right upper thigh about 5x4cm
- (iii) contusion over sacral region about 8x3cm
- (iv) Post dislocation of right hip

14.It is noticed that the claimant/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 40% disability, whereas, the Tribunal has fixed the disability at 30% and awarded compensation accordingly. Considering the nature of injuries, the Tribunal awarded compensation under 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.

15.Today, the injured/claimant is present before this Court. On his appearance, this Court finds that the claimant is still suffering with the disability and he has not recovered from it. Therefore, taking into consideration the disability aspect, the Tribunal has rightly fixed the notional income at Rs.4000/- and awarded the compensation, which



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requires no interference.

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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.204 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.

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

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1. The . MACT(Sub-Court) at Dharmapuri

2. The Record Keeper, VR Section, High Court, Madras



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KRISHNAN RAMASAMY.J.,
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