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CMA.(MD)No.1107 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 25/04/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

CMA (MD) No.1107 of 2022

and

CMP (MD) No.11274 of 2022

United India Insurance Company Limited,
Through its Branch Manager,
No.4, Promenade Road,
Cantonment,
Tiruchirapalli-620 001. : Appellant/2nd Respondent

Vs.

1.Praveen Kumar : 1st Respondent/Petitioner
2.Ayyappan : 2nd Respondent/1st Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 25/01/2022 made in MCOP No. 149 of 2017 on the file of the Special Sub Judge, Tirunelveli.

For Appellant : Mr.A.Ilango
For 1st Respondent : Mr.T.Selvakumaran
For 2nd Respondent : Dispensed with



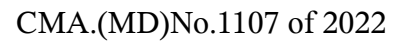
JUDGMENT

This Appeal is filed seeking to set aside the decree and judgment, dated 25/01/2022 passed in MCOP No.149 of 2017 by the Special Sub Judge, Tirunelveli.

2.The facts in brief:-

On 27/10/2016 at about 12.00 noon, the petitioner was riding his motorcycle bearing registration No.TN-72-BB-6657 from Valliyoor to Tirunelveli. When he reached Anamalai Toyota Car Company near Tuckerammalpuram, the lorry bearing registration No.TN-57-BA-3084 belongs to the first respondent was driven by its driver in a rash and negligent manner, in high speed came in the wrong direction and hit the motor cycle. He was thrown out, fell down and sustained injuries. He was taken to the TVMC Hospital, Palayamkottai and admitted and in patent. Thereafter took treatment in Balaji Hospital at Valliyoor from 06/11/2016 to 16/11/2016. He underwent surgery on 09/11/2016.

3.Over the occurrence, a case in Crime No.327 of 2016 was registered for the offences under sections 279 and 337 IPC against the first respondent vehicle driver. Claiming compensation, the petitioner filed the claim petition.



6. At the conclusion of the enquiry, the Tribunal found that the accident occurred only due to the rash and negligent driving of the driver of the 1st respondent and award a total compensation of Rs.5,39,700/-.



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7.The Tribunal recorded a finding with regard to the negligent aspect that because of the rash and negligent driving of the first respondent vehicle only, the occurrence took place. It fastened the liability upon the insurer for the payment of compensation.

8.With regard to the compensation, it arrived at the total compensation of Rs.5,39,700/-. The Insurance Company was directed to pay the money and recover the same from the first respondent holding that even though the cheque was dishonoured, but on the date of the occurrence, the policy was in force.

9.Against which, this Civil Miscellaneous Appeal is preferred.

10.Regarding the negligence aspect, it is admitted that a case has been registered only against the first respondent driver. He has stated that the informant is the father of the claimant. He is not the eye witness to the occurrence. From the information gathered, he has stated that because of the rash and negligent driving on the part of the first respondent vehicle driver, the occurrence took place.



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11.The petitioner also stated in his evidence that he was riding his motorcycle on the south-north road from south north direction. The offending vehicle was coming in the opposite direction. He came in the same direction by overtaking the auto and hit him. It was suggested to him that he suddenly crossed the road on the side and invited the accident. To show the same, there is no contra evidence from the second respondent. The driver of the offending vehicle was not examined on the side of the respondent. So, the manner in which, the occurrence took place clearly indicates that it occurred only due to the rash and negligent driving on the part of the first respondent vehicle driver. The evidence of PW1 was accepted by the trial court. On that account, I find that no interference is required.

12.Regarding the quantum also, it is seen that he suffered injured on the right frontal bone, left forearm, left wrist, left ring finger, left scapula, right clavicle, hip and there is loss of incisors also. He was taking treatment as inpatient in Balaji Hospital from 08/11/2016 to 16/11/2016. He underwent surgery on 08/11/2016. It is also corroborated by the discharge summary, wound certificate Exs.P2 and P12. Later he was admitted in the Retnamas Hospital from 18/07/2020 to 20/07/2020.



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13.PW2 was the Doctor, who treated the petitioner. He is a Consultant in Valliyoor Balaji Hospital. He is Orthopedic Surgeon. He admitted the petitioner for surgery. He produced Ex.P19 treatment particulars. So from the evidence of PW2 and the materials produced, it is stand established that the petitioner suffered multiple injuries. So he was referred to Tirunelveli Medical Board for assessing the disability. The Medical Board assessed the disability and submitted a report. Wherein, it has been mentioned that the petitioner suffered 31% partial permanent disability. Considering the above disability, the Tribunal fixed Rs.4,000/- per disability, considering the nature of the injuries suffered and the disability. I find that it is also reasonable.

14.Apart from that compensation for the disability, transport charge was fixed at Rs.10,000/, Attendant charges at Rs.10,000/-, Loss of income Rs.10,000/- has been fixed. I find absolutely no reason to interfere in the above conventional heads. Medical expenses are calculated on the basis of the records under Exs.P3, P4, P13, P14 and P16. So that amount also requires no interference.



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15.Regarding the pain and suffering, it assessed a sum of Rs.40,000/-. Considering the multiple injuries suffered, number of days of admission, that amount also requires no interference.

16.In the result, this Civil Miscellaneous Appeal is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

25/04/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Motor Accident Claims Tribunal/
Special Sub Judge.
Tirunelveli.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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