



C.M.A(MD)No.92 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.92 of 2018

United India Insurance Company Limited,
Having its office at Tuticorin,
(Policy No.0910100/31/02/01293) ... Appellant/2nd Respondent

Vs.

1.Parthiban ... 1st Respondent/Petitioner

2.Ayyarappan ... 2nd Respondent/1st Respondent

3.Chockkalingam ... 3rd Respondent/3rd Respondent

(Third respondent impleaded as per order in I.A.No.344 of 2006, dated 23.11.2006 and claim petition amended as per order in I.A.No.442 of 2006, dated 02.12.2006)

(Claim Petition dismissed as against third respondent as per judgment and decree, dated 28.09.2007)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to allow this appeal, reverse and set aside the judgment and decree, dated 28.09.2007 made in M.C.O.P.No.687 of 2005 on the file of the Motor Accident Claims Tribunal, Principal Sub



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Court, Tirunelveli.

For Appellant : M/s.M.Sudharani
for M/s.Vijayakumari Natarajan

For R-1 : Mr.A.Hajamohideen

For R-2 : No appearance

R-3 : Died

JUDGMENT

The present appeal has been filed by the Insurance Company challenging the award passed in M.C.O.P.No.687 of 2005 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tirunelveli, on the ground of liability and quantum.

2. According to the injured claimant, he is working as a Manager / Accountant and Agriculturist. While he was a pillion rider in a two-wheeler, he was knocked down by a mini lorry owned by the first respondent and insured with the second respondent in the claim petition. He had further contended that he had sustained grievous injuries and prayed for a compensation of Rs.20,00,000/-. The owner of the mini lorry and the owner of the two-wheeler in which the injured claimant had travelled had remained *ex parte*.



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3. The Insurance Company had filed a counter contending that the accident has taken place only due to the rash and negligent driving on the part of the two-wheeler. They have further contended that the driver of the mini lorry was not having valid and effective driving license at the time of accident and therefore, they are not liable to pay compensation.

4. The Tribunal after considering the evidence on either side has arrived at a finding that the Insurance Company has not let in any evidence to establish the fact that the driver of the mini lorry was not having valid and effective driving license on the date of the accident and mere pleading in the counter affidavit is not enough. The Tribunal has proceeded to fix the notional monthly income at Rs.4,000/- and has relied upon Exhibit P.15 disability certificate and has arrived at a finding that the claimant had sustained 80% disability. Since the claimant had sustained 80% disability, the Tribunal has proceeded to apply the multiplier method and has arrived at the compensation of Rs.5,76,000/- towards loss of income. The Tribunal has further awarded Rs.50,000/- towards pain and sufferings, Rs.15,000/- towards extra nourishment and the medical expenses have been reimbursed. Totally, compensation of



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Rs.9,07,100/- along with 7.5% interest has been awarded. Challenging the said award, the present appeal has been filed by the Insurance Company.

5. According to the learned Counsel appearing for the Insurance Company, the driver of the mini lorry was not having driving license at the relevant point of time. She further contended that the age of the injured claimant has not been proved and therefore, the Tribunal was not right in relying upon the age of the claimant as 43. She further contended that there is no proof of income on the side of the claimants and therefore, the Tribunal was not right in fixing the quantum of monthly income at Rs.4,000/-.

6. Per contra, the learned Counsel appearing for the respondent herein had contended that, in order to prove the monthly salary, they have marked Exhibits P.11 and P.16 and they have also examined P.W.3, who is the Manager of the Establishment, in which the claimant is working and therefore, they have proved the income. He further contended that the age of the injured claimant has not been disputed. Therefore, he prayed for confirming the award passed by the Tribunal.



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7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. As far as the contention of the learned Counsel appearing for the appellant that the driver of the mini lorry was not having a valid and effective driving license on the date of accident is concerned, the Insurance Company has not chosen to examine anyone on their side. They have not even issued a notice to the owner of the mini lorry after receipt of summons from the claims Tribunal. Therefore, the Insurance Company has not discharged their initial burden of proving that the driver of the offending vehicle was not having valid driving license.

9. The injured claimant himself has lodged the FIR before the police in which his age is referred to as 42. The Tribunal has taken the age as 43. Therefore, this Court does not find any reason to contradict the said findings of the Tribunal.

10. The claimants have placed on record Exhibits P.11 and P.16 and have also examined the Manager of the concerned Organisation as P.W.3 to prove their income. Though the claimants contended that he



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was receiving a salary of Rs.5,000/- per month along with Rs.70 as daily batta, the Tribunal has taken into consideration only a sum of Rs.4,000/- as monthly income. The accident having taken place in the year 2003, this Court does not find the notional monthly income fixed by the Tribunal is in anyway unreasonable.

11. In view of the above said facts, the Tribunal has rightly considered the factual and legal position and has passed the present award. Therefore, there are no merits in this appeal. Hence, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

26.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Motor Accident Claims Tribunal,
Principal Sub Court,
Tirunelveli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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BTR

Judgment made in
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