

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.08.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

C.M.A. NO. 606 OF 2011

AND

M.P. NO. 1 OF 2011

The National Insurance Co. Ltd.
Chennai. .. Appellant

- Vs -

1. Mr. Kumaresan
2. Mr. Radhakrishnan .. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.07.10, passed by the Motor Accident Claims Tribunal (Addl. District Judge, FTC-I), Chidambaram, Cuddalore District, made in MCOP No.132 of 2008.

For Appellant : Mr. J.Chandran

For Respondents: Mr. D.Murugan for R-1
No Appearance for R-2

JUDGMENT

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent. There is no representation for the second respondent.

2. The appeal has been filed by the insurer of the vehicle, viz., National Insurance Company, challenging the award dated 29.07.10 passed by the Motor Accidents Claims Tribunal (Addl. District Judge, FTC-I), Chidambaram, Cuddalore District, made in M.C.O.P. No.132 of 2008, fixing the liability on the insurer.

3. It is a case of injury sustained by the first respondent in an accident that happened on 10.10.04. On 10.10.04, in the morning hours, when the first respondent, Kumaresan, was walking from East to West on the mud road near Annamalai Nagar, the auto bearing Regn. No.TST-5274, belonging to the second respondent, driven in a rash and negligent manner by the driver, dashed on the first respondent and as a result of the accident, the first respondent suffered multiple injuries including fracture on the

left shoulder. The first respondent took treatment at Cuddalore by staying at his relatives house. A case was registered against the driver of the auto. The first respondent herein, who suffered the accident and sustained multiple injuries and fractures, claimed compensation in a sum of Rs.5,00,000/-.

4. In support of the claim, the first respondent examined himself as P.W.1 and Dr.Balamurugavel was examined as P.W.2, and Exs.P-1 to P-13 were marked, the details of which are as follows:-

Ex.P-1	-	Certified copy of FIR
Ex.P-2	-	Certified Copy of Motor Vehicle Inspector's Report
Ex.P-3	-	Photocopy of Accident Register
Ex.P-4	-	Copy of Injuries Report
Ex.P-5	-	Certified copy of Discharge Report
Ex.P-6	-	Out-Patient Receipts of Raja Muthaiah Hospital
Ex.P-7	-	Copy of charge sheet
Ex.P-8	-	Copy of Judgment in CC No.872/2004 of Judicial Magistrate, Chidambaram
Ex.P-9	-	Copy of Driving Licence
Ex.P-10	-	Photocopy of Policy Document
Ex.P-11	-	X-Ray
Ex.P-12	-	Disability Certificate issued by P.W.2
Ex.P-13	-	X-Ray

5. Though no exhibits were marked either by the owner of the vehicle, viz., the second respondent herein, or the Insurance Company, viz., the appellant herein, one Dr.Muyalasu was examined as R.W.1.

6. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the corroborating evidence in the form of the evidence of P.W.2 in relation to the disability due to the injuries suffered in the accident and also taking into account the documentary evidence, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the auto and, therefore, the liability was fixed on the second respondent herein viz., the owner of the auto and consequently the appellant, viz., the

insurer of the auto, was directed to compensate the first respondent.

7. Insofar as negligence is concerned, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal and further no material has also been placed before this Court to come to a different conclusion than the one arrived at by the Tribunal.

8. The Tribunal, on considering the evidence, both oral and documentary, awarded compensation under the following heads :-

Sl. No.	Head	Amount granted by the Tribunal
1	Permanent Disability @ 24%	Rs.24,000/-
2	Pain & Suffering	Rs.10,000/-
3	Extra Nourishment	Rs.2,000/-
	Total	Rs.36,000/-

In all, the Tribunal awarded a sum of Rs.36,000/- towards the claim made by the first respondent along with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till the date of deposit.

9. Though the learned counsel appearing for the appellant/insurance company strenuously contended that the amount awarded by the Tribunal is not sustainable as the first respondent has not lodged the FIR at the earliest point of time, but has lodged it after a period of 40 days, this Court is not agreement with the said contention, as the first respondent has explained the cause of delay in lodging the FIR stating that as he was taking treatment at Cuddalore, he could not lodge the FIR immediately, which reason has been accepted by the Tribunal. This Court, sitting in appeal, is not inclined to interfere with the same. Further, taking into account the injuries suffered by the first respondent as also the permanent disability, the award, as passed by the Tribunal, by no stretch of imagination, could be termed as exorbitant and unreasonable. The Tribunal has not awarded any amount under the head "transportation expenses", "loss of earning", "incidental medical charges" and "mental agony". However, the claimant has not filed any appeal claiming enhancement of the amount under the above heads. In the above circumstances, this Court is of the considered opinion that there is no reason to interfere with the amount awarded by the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. It is stated that the appellant has deposited only a sum of

Rs.18,000/=, to the credit of MCOP No.132 of 2008, at the time of filing this appeal. In view of this Court confirming the award as ordered by the Tribunal, the appellant/insurance company is directed to deposit the entire award amount, less the amount already deposited, along with interest at the rate of 7.5%, as ordered by the Tribunal, from the date of the claim till the date of deposit to the credit of MCOP No.132/2008 within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent herein/claimant is permitted to withdraw the entire award amount. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

GLN

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

The Addl. District Judge
(Motor Accident Claims Tribunal)
FTC - I, Chidambaram
Cuddalore District.

+ 1 cc to Mr.J.Chandran, Advocate SR 45635

+ 1 cc to Mr.A.Murugan, Advocate SR 45218

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