IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.08.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

C.M.A. NO. 1828 OF 2008

The National Insurance Co. Ltd.
Chennai. .. Appellant/R2

- Vs -

1. Mr.V. Kathiravan ..R1 Petitioner
2. Mr.A.Nedunchezhian ..R2 R1

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.09.07, passed by the Motor Accident Claims Tribunal (Addl. District & Sessions Judge), FTC-IV, Poonamallee, Tiruvallur District, made in MCOP No.226 of 2005.

For Appellant : Mr. J.Chandran

For Respondents: No Appearance

JUDGMENT

Heard the learned counsel appearing for the appellant. There is no representation for the respondents.

2. The appeal has been filed by the insurer of the vehicle, viz., National Insurance Company, challenging the award dated 28.09.07 passed by the Motor Accidents Claims Tribunal (Addl. District & Sessions Judge), FTC-IV, Poonamallee, Tiruvallur District, made in M.C.O.P. No.226 of 2005, fixing the liability on the insurer.

3. It is a case of injury sustained by the first respondent in an accident that happened on 11.12.99. On 11.12.99, at about 01.00 a.m., when the first respondent, Kathiravan, was driving the Mahindra Tempo bearing Regn. No.TN-21-Z-0932 at Ozhapakkam, the lorry, belonging to the second respondent, bearing Regn. No.TB-51-5950, driven in a rash and negligent manner, dashed against the Mahindra Tempo driven by the first respondent and as a result of the accident, the first respondent suffered severe grievous injuries including multiple fractures on various parts of the body. The first respondent was initially admitted at the

Government Hospital at Tindivanam, and, thereafter, took treatment at the Chengalpat Government Hospital and further treatment as in-patient at the Government Hospital, Chennai. A case was registered against the driver of the lorry. The first respondent herein, who suffered the accident and sustained grievous injuries and multiple fractures, claimed compensation in a sum of Rs.15,00,000/-.

4. In support of the claim, the first respondent examined himself as P.W.1 and Dr.Sai Chandran and Dr.Kalkura were examined as P.W.s 2 and 3, and Exs.P-1 to P-7 were marked, the details of which are as follows:-

Ex.P-1	-	Photo copy of FIR
Ex.P-2	-	Photo copy of Accident Register
Ex.P-3	-	Discharge Summary
Ex.P-4	-	Disability Certificate
Ex.P-5	-	X-ray
Ex.P-6	-	Disability Certificate at 60%
Ex.P-7	-	X-ray

5. Neither the owner of the vehicle, viz., the second respondent herein, nor the Insurance Company, viz., the appellant herein, examined any witnesses nor marked any documents.

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.Ws.2 and 3 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 lorry and, therefore, the liability was fixed on the second respondent herein viz., the owner of the van and consequently the appellant, viz., the insurer of the lorry, 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	Transportation Expenses	Rs.2,000/-
2	Extra Nourishment	Rs.1,000/-
3	Mental Agony	Rs.20,000/-
4	Loss of Earning capacity	Rs.32,000/-
5	Pain & Suffering	Rs.20,000/-
6	Permanent Disability	Rs.1,20,000/-
7	Incidental Medical charges	Rs.5,000/-
	Total	Rs.2,00,000/-

In all, the Tribunal awarded a sum of Rs.2,00,000/- 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. In case of any default in deposit of the amount as awarded above, the insurer was directed to pay default interest at the rate of 12%.

9. Though the learned counsel appearing for the appellant/insurance company strenuously contended that the amount awarded by the Tribunal is exorbitant, considering the fact that the claimant had suffered grievous injuries and also suffered multiple fractures all over the body, which is proved through the deposition of P.W.s 2 and 3 and further taking into account the fact that the claimant being the owner of the van and the earning capacity as determined by the Tribunal, this Court is of the considered opinion that the compensation awarded by the Tribunal cannot be, by any stretch of imagination, be termed to be exorbitant.

10. In fact, the claimant has suffered multiple fractures all over the body. The evidence of P.W.2 would reveal that the claimant cannot perform the job of the driver. The disability has been assessed at 60%. P.W.3 has also spoken about the facial condition of the petitioner and his difficulty to even open the mouth and eat hard food. Considering all the above aspects, this Court is of the considered opinion that the amounts granted under the heads "pain and suffering", "loss of earning", "extra nourishment", "incidental medical charges" and "mental agony" are on the lower side. However, the claimant has not filed any appeal claiming enhancement of the amount under the above heads. In the above background, this Court is of the considered opinion that there is no reason to interfere with the amount awarded by the Tribunal. However, the default interest

granted at 12% cannot be justified as per the decision of the Apex Court in National Insurance Co. Ltd. - Vs - Keshav Bhahadur & Ors. (2004 ACJ 648). Accordingly, while the award of the Tribunal insofar as compensation granted and interest at 7.5% is confirmed, the default interest at the rate of 12% granted by the Tribunal is set aside.

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed in the above terms. It is stated that the appellant has deposited only a sum of Rs.25,000/=, to the credit of MCOP No.226 of 2005, at the time of filing this appeal. In view of this Court confirming the award as ordered by the Tribunal above, 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.226/2005 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. However, in the circumstances of the case, there shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

GLN

To

The Addl. District & Sessions Judge
(Motor Accident Claims Tribunal)
FTC - IV, Poonamallee
Tiruvallur District.

+1 cc to Mr.J.Chandran, Advocate sr.95610

C.M.A. NO. 1828 OF 2008

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