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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.97 of 2010

The Divisional Manager
The National Insurance Co.Ltd.,
Pondicherry

... Appellant/2nd
Respondent

-Vs-

1. Lebon Ganapathy
W/o late Lebon Varadaraju

2. Narayanan
S/o Venkatesan

... Respondents/Petitioners
& 1st Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 19.8.2009 made in M.A.C.T.O.P.No.1129 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional Sub Judge), Pondicherry.

For Appellant : Mr.S.Vadivel

For Respondents : No appearance for R1
Mr.R.Natarajan for R2

JUDGMENT

This appeal is directed against the impugned award dated 19.8.2009 passed in M.A.C.T.O.P.No.1129 of 2005 by the National Insurance Company Limited on various grounds.

2. Learned counsel for the appellant-Insurance Company contended that the Motor Accidents Claims Tribunal ought to have dismissed the claim petition filed by the first respondent on the ground of delay of 14 years from the date of accident for filing such petition. Continuing his arguments, he submitted that when the accident took place on 6.1.91, without any explanation whatsoever, the claim petition was filed on 2.9.2005 with some false particulars and this has been wrongly allowed by



the Tribunal, erroneously shifting the onus of proving the non-possession of the policy, against the appellant. Therefore, the Insurance company, he claims, is right in questioning the award of the Tribunal on the liability. Adding further the learned counsel submitted that when the claim was made on 2.9.2005 for payment of a sum of Rs.2,00,000/- as compensation, namely, for pain and suffering at Rs.10,000/-, for extra nourishment at Rs.5,000/- and for permanent disablement at Rs.1,85,000/-, no proof with regard to the validity of the insurance policy on the date of accident in respect of the vehicle owned by the second respondent was produced, therefore, the claim petition filed with a delay of 14 years ought not to have been entertained by the Tribunal, he claimed. In view of the huge and unexplained delay of 14 years, the appellant-Insurance company is not in a position to ascertain the facts and the manner of the accident. However, when the Insurance company denied the alleged accident that had taken place on 6.1.91 involving the first respondent-claimant and the bus bearing registration No.PYT-1155 belonging to the second respondent-insured, the Tribunal ought not to have fixed the liability on the appellant-Insurance company. Even before the Tribunal, the appellant-Insurance company had categorically denied that the driver of the bus bearing registration No.PYT-1155 had valid and subsisting driving licence with necessary endorsement to drive the vehicle. Again the Insurance company, the appellant herein has again further denied that the said vehicle was insured by this appellant, because, either on the date of registration of the First Information Report or on the date of making the claim before the Tribunal, no valid or subsisting insurance policy to claim the compensation against the appellant-Insurance company was produced. For these reasons, the Tribunal ought to have accepted the denial made by the Insurance company with regard to the claim of the first respondent-claimant.

3. Continuing his arguments, the learned counsel for the appellant submitted that the award of the Tribunal accepting the claim of compensation of a sum of Rs.10,000/- towards pain and suffering, a sum of Rs.5,000/- towards extra nourishment and a sum of Rs.1,85,000/- towards permanent disablement, totalling a sum of Rs.2,00,000/-, is excessive, arbitrary and without any proof has not been properly answered, since it was not properly supported by the claimant. Above all, the registration number of the vehicle alleged to have been involved in the accident on 6.1.91 has not been proved satisfactorily before the Tribunal, more particularly, when the said vehicle number does not find a place in the receipt, the Tribunal ought to have rejected the claim, even on merits. As it has not done so, the appeal filed by the Insurance company deserves to be allowed.

4. No one appeared for the first respondent/claimant.



5. However, the learned counsel for the second respondent-insured submitted that the contentions put forth by the appellant-Insurance company with regard to the delay in making the claim in the year 2005 when the accident took place on 6.1.91 at about 6.45 a.m., cannot be accepted, since there is no limitation for filing the claim petition as per the latest amendment made in the Motor Vehicles Act. Adding further, he submitted that when the provision directing the claimant to file the claim petition within a specified time limit has been annulled, as rightly held by the Tribunal, the claimant is entitled for compensation, irrespective of the delay, needs to be accepted by this Court. Continuing further the learned counsel submitted that on the date of the accident, namely on 6.1.91, the claimant made a complaint before the jurisdictional police station and a F.I.R., was also registered and a copy of the same was also produced before the Tribunal in support of the claim. Since the claimant has marked the F.I.R., as Ex.P-1, based on the complaint given on 6.1.91 by one Mr.Somu, who was running a tea stall and who had witnessed the accident, the Tribunal came to the conclusion that the F.I.R., supported the claim. As a matter of fact, the appellant also cross-examined P.W.1 contending that the accident took place on 6.1.91 and that the same occurred due to the negligence of the victim-claimant. However, this contention put forth by the appellant was denied by the claimant and the same was accepted by the Tribunal. Finally, assessing the permanent disability at 33%, a sum of Rs.33,000/- at the rate of Rs.1,000/- per percentage considering the nature of injuries and the nature of disability suffered by Mr.Lebon Ganapathy, the claimant, was awarded by the Tribunal. In addition to the above, a sum of Rs.9,000/- was awarded towards loss of earning. That apart, the period of treatment and the age of the claimant-Mr.Lebon Ganapathy having been accepted, a sum of Rs.5,000/- was awarded towards medical transportation and another sum of Rs.5,000/- was awarded towards extra nourishment. Further, Rs.5,000/- towards medical expenses and Rs.5,000/- towards pain and suffering were awarded by the Tribunal. Overall, a sum of Rs.62,000/- alone has been awarded as total compensation as against the claim of Rs.2,00,000/-. Therefore, the learned counsel submitted that when the Tribunal has correctly assessed the compensation on the basis of the Ex.P1-F.I.R., and other material documents, no interference is called for with the impugned award.

6. This Court finds some force in the said submissions. The reason is that the accident took place on 6.1.91 at about 6.45 a.m., while the claimant was walking along M.G.Road and proceeding from south to north opposite to Ashram cement godown, Muthialpet, Pondicherry, the vehicle bearing Registration No.PYT-1155 owned by the second respondent and insured with the



appellant, having been driven by its driver, first dashed at a cyclist and then at a scooterist who was coming in the opposite direction and thereupon hit the claimant, as a result he suffered grievous injuries. In support of his claim, the victim has marked Ex.P1-F.I.R. The Tribunal, after perusing the contents of the F.I.R., that was lodged against the second respondent's vehicle, accepted the case of the claimant that he sustained injuries only due to the accident. In addition to the above, the disability certificate, Ex.P4 produced by the doctor was also taken as an acceptable evidence. This apart, the accident investigation report, Ex.P3 has consistently spoken about the factum of accident that took place on 6.1.91 in which the claimant suffered injuries. In that view of the matter, considering the fact that a total compensation of Rs.62,000/- alone was fixed and paid to the claimant based on the evidence, this Court is not inclined to interfere with the impugned award. Accordingly, the appeal fails and it is dismissed. Consequently, interim order stands vacated and the M.P.No.1 of 2010 is also dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Motor Accidents Claims Tribunal
(Additional Sub Judge)
Pondicherry

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.Vadivel, Advocate, S.R.No.59709
+1cc to Mr.R.Natarajan, Advocate, S.R.No.59997

C.M.A.No.97 of 2010

PA(CO)
CA(27/01/2016)