



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2015

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.(MD)No.753 of 2015

and

M.P(MD)No.1 of 2015

The Branch Manager,
The National Insurance Co. Ltd.,
Kanchipuram.

: Appellant/Respondents

Vs.

1.Arammal : Respondent/Petitioner

2.Karupusamy : Respondent/Respondent - I

Appeal filed under Section 173 of Motor Vehicle Act praying to set aside the fair and decreetal order, dated 30.11.2011 made in M.C.O.P.No.404 of 2006, on the file of the Motor Accidents Claims Tribunal (Sub Court), Palani and allow this Civil Miscellaneous Appeal.

For Appellant : Mrs.K.R.Shiva Shankari
for Mr.S.Srinivasa Raghavan

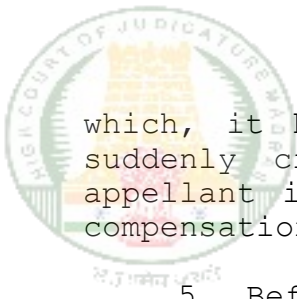
JUDGMENT

The appellant has filed this appeal to set aside the fair and decreetal order, dated 30.11.2011, made in M.C.O.P.No.404 of 2006, on the file of the Motor Accidents Claims Tribunal (Sub Court), Palani.

2. The appellant Insurance Company is the second respondent in the claim petition filed by the first respondent in M.C.O.P.No.404 of 2006, on the file of the Motor Accident Claims Tribunal(Sub-Court), Palani, claiming compensation of Rs.4,00,000/- for the injuries sustained by her in the accident that took place, on 03.12.2005.

3.The second respondent was riding the TVS motorcycle, bearing Registration No.TN 57 X 2602 in a rash and negligent manner and dashed against the first respondent and caused accident. In the accident, the first respondent sustained injuries. She has taken treatment at Sakthi Hospital, Oddanchathiram and then KMCH, Coimbatore. She has sustained 20% of permanent disability. Therefore, she filed a claim petition, claiming compensation for a sum of Rs.4,00,000/-. The second respondent remained ex-parte before the Tribunal.

4. The appellant filed counter statement before the Tribunal denying the claim. She is not ready to pay compensation. According to the appellant, the accident did not take place due to rash and negligent driving by the second respondent. The accident did not take place in the manner in



which, it has been stated in the claim petition. The first respondent suddenly crossed the road and invited the accident. Therefore, the appellant is not liable to pay any compensation. The amount claimed as compensation, is excessive.

5. Before the Tribunal, the first respondent examined himself as P.W.1 and one doctor Shanmugaraj was examined as P.W.2 and marked 9 documents as Ex.P.1 to Ex.P.9. On the side of the appellant, one R.Rajendran was examined as R.W.1 and one Gowthaman was examined as R.W.2 and marked two documents as Ex.R1 and Ex.R2.

6. The Tribunal framed necessary points for consideration.

7. The Tribunal considering the pleadings and evidence, came to the conclusion that only due to the rash and negligent driving of second respondent, the accident took place. The appellant, who is the insurer of the vehicle of the second respondent and the second respondent are liable to pay compensation. Considering the evidence of P.W.1 & P.W.2 Doctor, the Tribunal awarded a compensation of Rs.1,40,000/-. Aggrieved against the said order, the present appeal is filed.

8. The learned counsel for the appellant contended that the Tribunal did not properly consider the defence set forth by the appellant. The sketch marked as Ex.R2 clearly shows that the accident took place in the middle of the road. But, The Tribunal failed to appreciate the same in proper perspective. The accident occurred due to negligence of the first respondent and the Tribunal, in the circumstances, should have reduced and apportioned the compensation accordingly. The compensation awarded is excessive.

9. I have carefully perused the materials on record and heard the arguments of the learned counsel for the appellant.

10. Before the Tribunal, the first respondent was examined herself as P.W.1 and deposed that as to how the accident took place. The main contention of the appellant is that first respondent contributed to the accident. The accident took place only due to negligence of the first respondent. This contention was disproved by the examination of R.W.1 during the trial, who admitted that the accident took place on the left hand side of the road. Therefore, the Tribunal has rightly concluded that the accident took place not due to negligence of the first respondent, but only due to rash and negligent driving by second respondent. P.W.2 doctor deposed the nature of injury suffered by the first respondent and percentage of disability. The appellant did not let in any contra evidence to the evidence let in by the first respondent through P.W.2 doctor. The Tribunal has granted just compensation in taking into consideration the nature of injuries sustained by the first respondent on percentage of injury. Similarly, the quantum of compensation granted all other heads are not excessive and there is no circumstances, warranting interference by this Court.



11. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(R)

WEB COPY

/True copy/

Sub Assistant Registrar(CS)

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To
The Motor Accidents Claims Tribunal (Sub Court), Palani

+1 CC to Mr.S.Srinivasa Raghavan, Advocate, Sr.NO.37277

CMA. (MD) No.753 of 2015
08.07.2015

TR/DPV : 01.08.2015 : 3p/3c