

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.02.2017

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THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.420 of 2017

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C.M.P.No.2872 of 2017

The New India Assurance Co. Ltd.,
Branch Office No.710 500,
East Coast Chambers,
92, G.N.Chetty Road, T.Nagar,
Chennai-600 017. ... Appellant/II Respondent

Versus

1. Jayalakshmi ... 1st Respondent/Petitioner
2. M.Murthy ... 2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.10.2006 made in M.A.C.T.O.P.No.1489 of 2004 on the file of Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court No.1), Salem.

For appellant : Mr.K.Suryanarayan

J U D G M E N T

Challenging the liability as well as the quantum of compensation awarded by the Claims Tribunal, in M.C.O.P.No.1489 of 2004, dated 27.10.2006, the Insurance Company has filed this Civil Miscellaneous Appeal.

2. The Claimant, Jayalakshmi, aged 50 years, a fruit merchant and agriculturist earning a sum of Rs.200/- per day met with an accident that occurred on 20.05.2004, due to which, she had sustained fracture in the left wrist and a crack in right radius and also sustained multiple injuries. Hence, she filed a claim petition in M.C.O.P.No.1489 of 2004, seeking compensation for a sum of Rs.5,00,000/-.

3. The Claims Tribunal, on consideration of oral and documentary evidence has awarded a sum of Rs.47,180/- as compensation. The break-up details of the same are as under:

Permanent disability	-	Rs.40,000/-
Pain and suffering	-	Rs. 5,000/-
Extra Nourishment and Transport charges	-	Rs. 2,000/-
Medical Expenses	-	Rs. 180/-
Total		Rs.47,180/-

4. The learned counsel for the appellant submits that the compensation awarded by the Claims Tribunal is very high and the same needs to be reduced. He further submits that the Claimant was an unauthorized passenger in the goods vehicle and there was no coverage for such passenger and therefore the Insurance Company is not liable to pay compensation to the claimant.

5. P.W.6- the Doctor who examined the claimant/injured, in his evidence has deposed that since the claimant had sustained fracture in both the hands, it would be difficult for her to carry heavy objects and assessed the disability @ 35%. He has also issued Ex.P23-disability certificate.

6. A perusal of the award passed by the Claims Tribunal reveals that though the Doctor has assessed the disability @ 35%, the Claims Tribunal has fixed the disability only @ 25% and awarded a sum of Rs.40,000/- towards permanent disability, which cannot be said to be excessive. The amount of compensation awarded towards pain and suffering, extra nourishment and transportation are also not excessive. The Claims Tribunal, considering Ex.P24 has awarded a sum of Rs.180/- towards medical expenses.

7. Considering the nature of injuries sustained by the claimant and period of treatment, the Claims Tribunal has awarded just and reasonable compensation, which cannot be said to be excessive and the same needs no interference.

8. Insofar as liability of the insurer is concerned, though it is the contention of the appellant that the claimant was an unauthorised passenger in the goods vehicle, however, no evidence to substantiate the said contention has been adduced either before the Tribunal or before this Court. No evidence contra to the evidence adduced by the claimant, P.W.4, has been placed before the Court to give a different finding relating to

liability. In such view of the matter, the Claims Tribunal held that the accident occurred due to rash and negligent driving of the driver of the vehicle and, accordingly, fastened the liability on the appellant-Insurance Company, which also does not warrant any interference.

9. In the result, this Civil Miscellaneous Appeal is dismissed confirming the Judgment and Decree of the Claims Tribunal in M.C.O.P.No.1489 of 2004, dated 27.10.2006. No costs. Consequently, connected Miscellaneous Petition is closed.

10. The appellant/insurance company is directed to deposit the compensation awarded by the Tribunal along with interests and costs, less the amount, if any, already deposited, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the same directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

arr/GLN

To

1. The Motor Accidents Claims Tribunal,
(Additional District Judge, Fast Track Court No.1), Salem
2. The Section Officer, VR Section,
High Court, Madras.(2 copies)

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