

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.618 of 2017
and C.M.P.No.3602 of 2017

National Insurance Co. Ltd.,
Pudukottai Road,
Trichy.

... Appellant / 3rd respondent

versus

- | | |
|---------------|---|
| 1. Govindaraj | ... 1 st respondent / Petitioner |
| 2. Kangaraj | ... 2 nd respondent/1 st respondent |
| 3. Murthy | ... 3 rd respondent/2 nd respondent |

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.10.2005 made in M.A.C.T.O.P.No.253 of 2003 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Udumalpet.

For Appellant : M/s.N.B.Surekha

JUDGMENT

The claimant, Govindaraj, aged about 35 years, a milk vendor and agriculturist, earning a sum of Rs.10,000/- per month, met with an accident on 24.05.2003. The claimant, on returning from Kinathukadavu, getting down from the town bus was walking on the left side of Mayileripalayam-Yealur Main Road. While the claimant was walking near Thannasiappan Kovil, the vehicle (TVS XL Super) bearing Reg.No.TN38R 3783, coming in the opposite direction, driven in a rash and negligent manner, dashed against the claimant thereby causing him the injuries. Hence, he filed a claim petition in M.A.C.T.O.P.No.253 of 2003 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Udumalpet, claiming compensation of Rs.10,00,000/-.

2. The claimant relied upon the copy of the First Information Report as well as the evidence of the eye-witness, viz., P.W.3. The Insurance Company, the appellant herein, opposed the claim on the ground that the alleged vehicle was not at all involved in the accident. However, the Tribunal did not accept the said contention of insurance company and, accordingly, fixed the responsibility on the part of the Insurance Company to pay the compensation of Rs.1,25,000/- along

with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

3. Challenging the liability as well as the quantum of compensation, the Insurance Company has filed the appeal.

4. The learned counsel appearing for the appellant/Insurance Company submits that there was a delay of 5 days in preferring the First Information Report creates a suspicion that the alleged vehicle could not have been involved in the accident. It is the further submission of the learned counsel for the appellant that had the alleged vehicle involved in the accident and the accident had occurred in a manner spoken to by the claimant and the witnesses, the FIR would have been lodged immediately.

5. In order to appreciate the contention, it is necessary to look into the findings rendered by the claims Tribunal. The Tribunal has relied on the evidence of the injured (PW1) and the eye-witness (PW3). The Tribunal has also relied upon the First Information Report (Ex.P1), charge sheet (Ex.P2), Motor Vehicle Inspector's report (Ex.P4) and the copy of the Judgment of the Criminal Court (Ex.P5.). Though the involvement of the vehicle is disputed by the appellant/Insurance company, however, no material, either oral or documentary has been adduced by the appellant to substantiate the said contention. In the absence of any proof to substantiate the contention advanced by the appellant, this Court is of the considered view that the finding arrived at by the Tribunal fixing the involvement of the alleged vehicle in the accident cannot be found fault with.

6. On the question of compensation, the Tribunal, on appreciation of the above evidence on record, on appreciation of the evidence of the Doctor, who has assessed the disability at 38%, however, has conservatively, fixed the disability only at 25% and, awarded a sum of Rs.1,25,000/-, the breakup details of which are as hereunder :-

Permanent disability	-	Rs. 25,000/-
Medical expenses as		
supported by bills	-	Rs. 35,000/-
Loss of income	-	Rs. 57,600/-
Pain and sufferings	-	Rs. 5,000/-
Extra nourishment and		
damage to clothes	-	Rs. 2,400/-

Total	-	Rs.1,25,000/-
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7. Though compensation has been awarded under the above heads, however, the Tribunal has not taken account the loss of enjoyment of amenities and future prospective increase in income, while quantifying the compensation. In such circumstances, it cannot be said that the award is excessive or disproportionate. The Tribunal has appreciated the evidence, both oral and documentary and taking into consideration the evidence of the Doctor, has quantified the compensation, which, this Court finds to be just and reasonable and requires no interference.

8. For the reasons aforesaid, there being no merit, this Civil Miscellaneous Appeal is dismissed, confirming the award dated 21.10.2005 passed in M.A.C.T.O.P.No.253 of 2003 by the Motor Accident Claims Tribunal (Subordinate Judge), Udumalpet. Consequently, connected miscellaneous petition is closed.

9. The appellant/Insurance Company is directed to deposit the award amount as ordered by the Tribunal, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, 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 to the bank account of the claimant through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

The Motor Accident Claims Tribunal
(Subordinate Judge), Udumalpet.

+1cc to M/s.N.B.Surekha, Advocate, S.R.No.10932

C.M.A.No.618 of 2017

GMR (CO)
CS/26/02/18