IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2017

CORAM

THE HONOURABLE Dr.JUSTICE. S.VIMALA
C.M.A.No.3344 of 2017
and C.M.P.No.21230 of 2017

The Branch Manager,
National Insurance Company Ltd.,
Branch Office,
Dharmapuri. ... Appellant / 2nd respondent

versus

1. Mahadevan ... 1st respondent/Petitioner
2. D.Kumar ... 2nd respondent/1st respondent

Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 17.08.2005 made in O.P.No.621 of 2004 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court No.1), Dharmapuri.

For Appellant : Mr.D.Bhaskaran

JUDGMENT

The claimant, Mahadevan, aged about 48 years, an agriculturist as well as doing tomato business and earning a sum of Rs.4,000/- per month, met with an accident on 17.03.2004 and sustained injuries. Hence, he filed a claim petition in O.P.No.621 of 2004 before the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court No.1), Dharmapuri, claiming compensation of Rs.2,00,000/-

2. The Tribunal, on consideration of oral and documentary evidence, has passed an award for a sum of Rs.1,56,000/- as compensation, the break-up details of which are as under:

Disability	-	Rs.1,00,000/-
Injury	-	Rs. 36,000/-
Pain and suffering	-	Rs. 15,000/-
Extra nourishment	-	Rs. 5,000/-
Total	-	Rs.1,56,000/-

Challenging the quantum of compensation as excessive, the

Insurance Company has filed this appeal.

3. The learned counsel appearing for the appellant Insurance Company submitted that the vehicle involved in the accident is a goods vehicle, in which, 20 persons were travelling and as there was breach of policy conditions, the Insurance Company cannot be made liable to pay compensation. He further submitted that when the Tribunal has awarded an amount of Rs.1,00,000/- under the head of disability, awarding a sum of Rs.36,000/- towards injuries is unsustainable, therefore, the compensation awarded by the Tribunal has to be reduced.

4. In order to understand the clear facts and circumstances, the parties herein are referred to as per their ranking in the the Tribunal.

5. A perusal of the order passed by the Tribunal reveals that the vehicle belonging to the second respondent herein has been insured with the appellant Insurance Company. Ex.P3-Insurance Policy has been produced on the side of the claimants to prove the same. The Insurance Policy shows the validity of insurance till 20.05.2004. The said fact has not been disputed by the Insurance Company. Hence, the Tribunal has rendered a finding that vehicle involved in the accident, which belongs to the 2^{nd} respondent, was insured with the appellant Insurance Company.

6. However, the Insurance Company disputed its liability on the ground that the vehicle insured with the insurer being a goods vehicle, persons are not allowed to travel in the said vehicle. Therefore, for violation of the terms and conditions of the Policy, in that persons had travelled in the goods vehicle, the Insurance Company is not liable to pay compensation.

7. On the side of the Insurance Company, one Manivel, an Administrative Officer of the Insurance Company was examined as R.W.1 and in his evidence, he deposed that the Insurance Company conducted an investigation on the accident and a report (Ex.R2) has been filed by the Investigating Officer, viz., Guru Raghavendran, from which is evident that the accident had occurred, but driver of the vehicle was not in possession of a valid driving licence. Though R.W.1 has deposed in the above manner, however, the author of the Investigation Report was not examined. Therefore, the Tribunal has held that the said report could not be relied on as the best person to speak about the report is the person who prepared it and not anybody else.

8. Learned counsel appearing for the claimant relied on the decision of this Court in 2004 ACJ 895, wherein it has been held

that when gratuitous passengers, travelled in the goods vehicle, sustained injuries, the Insurance Company is liable to pay compensation. The Tribunal, based on the said Judgment has come to the conclusion the the Insurance Company is liable to pay compensation. The view taken by the Tribunal on the basis of the decision of this Court cannot be found fault with and the view is completely justified. The Tribunal, relying upon the evidence put forth before it, has come to the correct conclusion that the Insurance Company is liable to pay compensation. Hence, the finding of the Tribunal is not liable to be interfered with.

9. It is the evidence of the claimant that he was doing tomato business and due to the injuries, the claimant could not carry any articles by bending towards front and is not able to do his day-to-day work as before. A perusal of the nature of injuries suffered by the claimant reveals that the claimant would definitely have difficulty to continue his avocation as before, which would, in turn, affect his earning capacity. Hence, the Tribunal, by considering the nature of the job, nature of injury and impact of the injury on the earning capacity, granted Rs.1,00,000/- towards disability. The Tribunal has also awarded a sum of Rs.15,000/- towards pain and suffering and Rs.5,000/- towards extra nourishment.

10. Insofar as quantum of compensation is concerned, P.W.9-Doctor was examined on the side of the claimant. In his evidence, he has deposed that in the accident, the claimant has sustained four injuries, out of which, one is grievous in nature and other three injuries are simple in nature. There is a fracture of 8^{th} to 10^{th} rib bones (tpyh vYk;g[) and that bones are mal united due to which the claimant suffered severe pain in the chest and finds it difficulty to carry any articles. When compensation is awarded for loss of earning capacity, compensation for injury is unwarranted. However, Rs.36,000/- would be awarded under the head of loss of enjoyment of amenities, cost of attendant, transport and medical expenses.

11. Considering the nature of injuries, period of treatment, the impact of injuries on the earning capacity of the claimant, the compensation awarded by the Tribunal under the various heads as noted above cannot be said to be excessive and disproportionate. The Tribunal has given well reasoned findings for awarding the above amounts and, this Court is of the considered opinion that no interference is warranted with the compensation awarded by the Tribunal.

12. For the reasons aforesaid, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 17.08.2005 made in O.P.No.621 of 2004 on the file of the Motor Accident Claims

Tribunal (Chief Judicial Magistrate Court No.1), Dharmapuri. No costs. Consequently, connected miscellaneous petition is closed.

13. The Insurance Company is directed to deposit the entire amount of compensation awarded by the Tribunal, less the amount, if any, already deposited, along with interest at the rate of 9% p.a. from the date of petition till the date of deposit, to the credit of 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 shall transfer the same directly to the Bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
   (Chief Judicial Magistrate Court No.1),
   Dharmapuri.

2. The Section Officer,
   VR Section,
   High Court, Madras.

C.M.A.No.3344 of 2017

RV(CO)
CS/17/04/18