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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.1423,1551 and 2247 of 2008

National Insurance Company Limited,
No.7, Raja Street,
Gobichettypalayam.

...Appellant in CMA.Nos.1423,
1551 & 2247 of 2008/
2nd Respondent in all MCOPs.

Vs

1. Govindan Alias Govindaswamy ...1st Respondent in
CMA.No.1423 of 2008/Petitioner
2. Raja Alias Ammasai ...2nd Respondent in CMA.Nos
1423,1551 & 2247 of 2008/
1st Respondent in all MCOPs.
- 3.Durai Alias Chandrasekaran ...1st Respondent in
CMA.No.1551 of 2008/Petitioner
- 4.Venkatachalam ...1st Respondent in
CMA.No.2247 of 2008/Petitioner

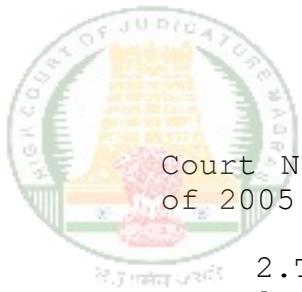
Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the common Award passed by the Motor Accidents Claims Tribunal, (Additional District Court and Fast Track Court No.2), Gobichettypalayam in MACTOP.Nos.167,170 and 187 of 2005 respectively, dated 05.05.2006.

For Appellant in all CMAs:Ms.N.B.Surekha in all CMAs.

For Respondents in all CMAs: Mr.M.Lokesh
for Mr.Ma.Pa.Thangavel
for R1 in all CMAs.
R2 - Not ready in Notice
in CMA Nos.1551 & 2247/08
R2,R3- No appearance in
CMA.1423/08.

COMMON JUDGMENT

The instant appeals have been filed challenging the common Award dated 05.05.2006 passed by the Motor Accidents Claims Tribunal, (Additional District Court and Fast Track



Court No.2), Gobichettypalayam in MACTOP.Nos.167,170 and 187 of 2005 respectively.

2.The brief facts leading to the filing of the instant appeals are as follows:

(i) The first respondents in all the three appeals, sustained injuries on 20.07.2004 as a result of an accident caused by a lorry bearing Registration No.TD-Q-600, owned by the second respondent and insured with the Appellant.

(ii) The first respondents in all the three appeals preferred separate claims before the Motor Accidents Claims Tribunal seeking compensation for the injuries sustained as a result of the accident caused by the lorry owned by the second respondent and insured with the Appellant.

(iii) The Motor Accidents Claims Tribunal, by its common Award dated 05.05.2006, directed the Appellant to pay the first respondents in CMA.No.1423 of 2008, a sum of Rs.2,26,240/-, in CMA.No.1551 of 2008, a sum of Rs.2,32,940/- and in CMA.No.2247 of 2008, a sum of Rs.1,16,200/- together with interest at the rate of 9%, Per Annum from the date of claim till the date of realisation.

(iv) Aggrieved by the Common Award dated 05.05.2006 passed in MACTOP.Nos.167,170 and 187 of 2005 respectively, the instant appeals have been filed by the Insurance Company.

3.Heard, Ms.N.B.Surekha, learned Counsel for the Appellant and Mr.M.Lokesh, learned Counsel for the first respondent in these appeals.

4.According to the learned Counsel for the Appellant, the Insurance Company is not liable to pay the compensation, since the first respondents in all these appeals were gratuitous passenger, for which, there is no insurance coverage under the policy. Further the learned Counsel for the Appellant would contend that the quantum of compensation awarded by the Tribunal is an excessive one and not in accordance with the settled principles of law lay down by this Court as well as the Honourable Apex Court.

5.She has submitted that the Tribunal ought not to have applied the multiplier method in assessing the compensation payable to the first respondents in all these appeals. If at all, any compensation is payable, the Tribunal ought to have assessed the same on lump sum basis, considering the disability suffered by the Appellant on account of the injuries sustained due to the accident.

6.Per contra, the learned Counsel for the second respondent in all these appeals would contend that the Tribunal has awarded the just compensation considering the fact, that the first respondents in all these appeals were employed by the second respondent as coolies and were travelling in the lorry insured with the Appellant which met with an accident.



8. After having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective Counsels, this Court observes the following:

(b) The first respondents in all the respective appeals is a load men employed by the second respondent and they were travelling in the lorry insured with the Appellant and as a result of the accident they have sustained injuries and all of them had sustained fractures. Even though the Appellant has disputed before the Tribunal in their counter statement, that the respective first respondents in all these appeals were load men, no contra evidence has been produced by the Appellant before the Tribunal to disprove the claim of the first respondents in all these appeals, that they were load men.

(d) The disability of the respective first respondents in the respective appeals was assessed at 32% by the doctor and the disability certificate was marked as exhibits before the Tribunal. No contra evidence has been produced by the Appellant to disprove the disability sustained by the first respondent in all these three appeals as a result of the accident.

9. The only infirmity in the order passed by the Tribunal is regarding payment of future interest by the Appellant. The Tribunal has awarded 9% interest, which, in the considered view of this Court, is not in accordance with the settled principles.



10. In the considered view of this Court, interest at the rate of 7.5% per annum would be an adequate interest payable to the respective first respondents in all these three appeals.

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11. In the light of the above observations, this Court is of the considered view, that excepting for reduction of interest at the rate of 7.5% p.a. instead of 9% per annum, the Award, in all other respects does not suffer from any infirmity.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed by modifying the interest portion of the compensation awarded by the tribunal from 9% per annum to 7.5% per annum from the date of claim till the date of realisation. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

(ii) In so far as other aspects are concerned, the compensation awarded by the Tribunal shall stand undisturbed.

(iii) The Tribunal has also permitted the Appellant to recover the compensation amount from the second respondent in all these three appeals by initiating separate proceedings which is not required as per law. In the considered view of this Court, the Appellant, instead of initiating separate proceedings, is permitted to recover the Award amount from the second respondent in all these three appeals under the same proceedings.

(iv) The Appellant is directed to deposit the entire award amount along with modified interest at the rate of 7.5% per annum instead of 9% per annum from the date of petition till the date of realisation, after adjusting the amount, if any, already deposited, to the credit of respective M.C.O.Ps, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respective claimant/1st respondent in the respective CMAs are permitted to withdraw the same on filing appropriate applications.

Sd/-

Assistant Registrar(CS-VI)

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Sub Assistant Registrar

msr/arb



To

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1.Motor Accidents Claims Tribunal,
(Additional District Court and Fast Track Court No.2),
Gobichettypalayam.

2.The Record Clerk,
VR Section,
High Court, Madras(2 copies)

+ 2 ccs to M/s. N.B. Surekha, Advocate Sr.65392 & 65391

+ 1 cc to M/s. Ma.Pa. Thangavel, Advocate Sr.65762

C.M.A.Nos.1423, 1551 and
2247 of 2008

(CS-VI)
EU(14/11/2018)