

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2885 of 2006 and
M.P.No.1 of 2006

National Insurance Company Limited,
No.751, Anna Salai,
Chennai -2

...Appellant/2nd Respondent

...Vs...

1.K.Paneerselvam
2.T.Kandasamy

... Respondents/Petitioners &
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 21.04.2006 in M.C.O.P.No.83 of 2002 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents : No appearance for R1
R2 not ready in notice

JUDGMENT

The appellant is the National Insurance Company Limited, Chennai. The first respondent/claimant filed a claim petition in M.C.O.P.No.83 of 2002 on the file of the II Judge, Court of Small Causes, Chennai, seeking compensation of Rs.15,00,000/- for the injuries sustained by him in a road accident that took place on 04.11.2001.

2.The brief case of the first respondent/claimant is as follows:

On 04.11.2001, the first respondent/claimant was travelling as a pillion rider in a two wheeler bearing Registration No. TN 02 K 3953 on the G.S.T road. When he was nearing a bridge at Pulippakkam, the rider of the two wheeler drove the vehicle rashly and negligently, as a result of which, the first

respondent/claimant fell down and sustained grievous injuries.

3. According to the first respondent/claimant, the rash and negligent driving of the rider of the two wheeler bearing Registration No. TN 02 K 3953 belonging to the second respondent was the cause of the accident and that since the said vehicle was insured with the present appellant, both of them are jointly and severally liable to pay compensation to him.

4. The second respondent, the owner of the two wheeler remained absent before the Tribunal and therefore, he was set ex-parte. The National Insurance Company limited, the present appellant contested the claim petition by filing a counter. The Tribunal after analysing the evidence on record, awarded a compensation of Rs.4,95,000/- together with interest at the rate of 7.5% to the first respondent/claimant. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited, Chennai has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr. S. Arun Kumar, learned counsel appearing for the appellant contended that there is a delay of 46 days in lodging the complaint with the police as evidenced by a copy of the FIR (Ex.P3). He also drew the attention of this Court to the discharge summary (Ex.P1), wherein, it is mentioned that the two wheeler in which the first respondent/claimant was travelling was hit by an auto. He would therefore contend that since there is a suspicion over the manner of the accident, the Tribunal should not have fastened the liability on the present appellant.

6. A perusal of records shows that the FIR (Ex.P3) was lodged after a lapse of 46 days. The evidence of the first respondent/claimant is that since the rider of the two wheeler bearing Registration No. TN 02 K 3953 drove the two wheeler rashly and negligently, he fell down and sustained injuries and subsequently got admitted himself in Kilpauk Government Medical College Hospital, Chennai on 08.11.2001 as there was some development of complication over the injuries. He has also deposed that FIR was lodged on the same date. The Tribunal after considering the oral and documentary evidence of the first respondent/claimant has held that the rider of the two wheeler was negligent in riding his vehicle and that the present appellant as well as the owner of the said vehicle should compensate the first respondent/claimant.

7. Infact, the rider of the two wheeler had lodged a complaint with the police on 08.11.2001, narrating the sequence of events that happened on 04.11.2001 and based on his complaint, the police after initial investigation has registered FIR (Ex.P3). Merely because, the doctor who recorded the

discharge summary (Ex.P1) has mentioned that the two wheeler was hit by an Auto, the entire claim petition cannot be thrown out since, no evidence was adduced on the side of the owner of the two wheeler as well as the present appellant to show that the two wheeler was hit by an Auto.

8.This is a case of amputation of right leg of the first respondent/claimant below knee level. Dr.Saichandran has assessed the permanent disability as 45% and the therefore, the Tribunal has awarded a sum of Rs.4,95,000/- to the first respondent/claimant.

9.In the facts and circumstances, it cannot be said that the award passed by the Tribunal is on the higher side. Furthermore, the first respondent/claimant did not file any cross objections or appeal seeking for enhancement of the quantum of compensation awarded by the Tribunal. Therefore, the award dated 21.04.2006 passed by the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai in M.C.O.P.No.83 of 2002 is upheld.

10.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
II Small Causes Court, Chennai.

2. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.S.Arunkumar, Advocate Sr.No.85761

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AD(CO)
CSL/20.02.2019