



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.NO.909 OF 2007

and

M.P.No.1 of 2007

The Oriental Insurance Co. Ltd.,
No.11, E.V.N. Road,
Parimalam Complex, II Floor,
Erode 638 011

...Appellant/2nd Respondent

Vs.

1. T.V.Girish ... 1st Respondent/Claimant
2. M/s. Velathal Spinning Mills (p) Ltd.
Patharai, Sowdhapuram Post,
Pallipalayam Via,
Erode 638 008. ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988, praying to set aside the decree and judgment passed in M.C.O.P. No.122 of 2004 dated 01.09.2006 on the file of the (Subordinate Judge) Motor Accident Claims Tribunal, Sankari.

For Appellant : Mr.J.Chandran

For Respondents : Mr.T.L.Thirumalaisamy for R1
No appearance for R2.

JUDGMENT

The appellant is the Oriental Insurance Company limited, Erode. The first respondent has filed a Claim Petition in M.C.O.P. No.122 of 2004 before the Subordinate Judge, Motor Accident Claims, Sankagiri, under Section 166(1) of the Motor Vehicles Act., claiming a compensation of Rs.4,90,000/- for the injuries sustained by him in the road accident that took place on 09.04.2004.

2. The contention of the first respondent/claimant is that he was a pillion rider in a motor cycle Bajaj M80 on Sankagiri



Erode Main Road. At about 10.00 AM, a speeding mini bus belonging to the second respondent, bearing Registration No. TN 28W 1092, hit the said two wheeler, as a result of which, the first respondent/claimant sustained injuries all over his body. According to the first respondent/claimant, the rash and negligent driving of the driver of the mini bus bearing registration No. TN 28W 1092, was the cause of 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 the claimant. The second respondent remained absent before the Motor Accident Claim Tribunal and therefore, he was set exparte.

3. The present appellant filed a counter before the Tribunal contending that the rider of the two wheeler also contributed to the accident. The learned Subordinate Judge, Motor Accident Claims Tribunal, after analysing the evidence on record, fixed the negligence on the part of the driver of the Mini Bus bearing Registration No. TN 28W 1092 and awarded a compensation of Rs.87,000/- together with interest at the rate of 7.5% per annum. Aggrieved over the order passed by the Tribunal dated 01.09.2006, the appellant/The Oriental Insurance Co. Ltd., has filed the present appeal.

4. Mr.J.Chandran, learned counsel appearing for the appellant would contend that, there is a delay in lodging the FIR and that the claimant also contributed to the accident and therefore, the tribunal was wrong in fixing the responsibility only on the driver of the bus bearing Registration No. TN 28W 1092. He would further contend that, the quantum of compensation awarded by the Tribunal is also on the higher side.

5. A perusal of the records shows that one Mr.Thangaraj, an eye witness to the occurrence was examined on the side of the first respondent/claimant, who has clearly deposed that the driver of the bus drove his vehicle rashly and negligently. Apart from this, a perusal of the copy of the FIR(Ex.P1) also substantiates the contention of the first respondent/claimant. Merely because there is a delay in lodging the FIR, the entire Claim Petition cannot be dismissed. In fact, the Tribunal had considered the oral and documentary evidence adduced by both the sides and had come to the conclusion that the driver of the bus bearing Registration No. TN 28W 1092 drove his vehicle rashly and negligently and caused the accident. All the observations made by the Tribunal are perfectly in order and therefore, I find no reason to interfere with the said observations. As far as the quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.87,000/- together with interest at the rate of 7.5% per annum to the claimant. Dr.Thiru.Chinnadurai(P.W.3) has assessed the partial permanent disability as 40% (Ex.P9) and a perusal of the medical records shows that the first



respondent/claimant has sustained fracture on his left fore arm and a surgery was also performed unplanting 2 metal plates. The award passed by the tribunal under various heads is extracted hereunder:

Sl.No.	Head	Amount (Rs.)
1.	Partial Permanent disability	40,000/-
2.	Medical Expenses	10,000/-
3.	Transportation charges	2,000/-
4.	Nourishment expenses	5,000/-
5.	Medical Bills	30,000/-
	Total	87,000/-

Even as per evidence on record, there is no functional disability and therefore, by any stretch of imagination, the award passed by the Tribunal can said to be on the higher side. Therefore, I find no merits in the arguments advanced by the learned counsel for the appellant.

6. Thus, the appellant is directed to deposit the entire compensation amount awarded by the Tribunal, less the amount already deposited by them, if any, together with interest at the rate of 7.5% per annum, from the date of filing of the claim petition till the date of deposit, within a period of 4 weeks from the date of receipt of copy of this order, and on such deposit being made, the first respondent/claimant is entitled to withdraw the same after following the due procedure of law.

7. With the above observations, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

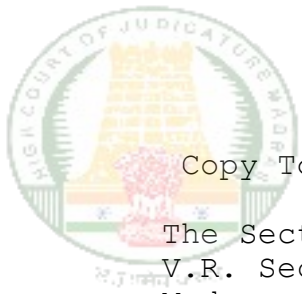
Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga
To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sankagiri.



Copy To

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

+1cc to Mr.J.Chandran, Advocate, S.R.No. 84946

+1cc to Mr.T.L.Thirumalaisamy, Advocate, S.R.No. 84886

C.M.A.NO.909 OF 2007

TM(CO)
GN(24/01/2019)