

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1790 & 1791 of 2009

The National Insurance Co. Ltd.,
Cuddalore -1.

.. Appellant in both appeals/
2nd Respondent

Vs

1.Pichaikaran ... 1st Respondent/Petitioner

2.Singaram @ Singaravelu ... 2nd Respondents in
C.M.A.No.1790 of 2009/
1st Respondent

1.Kolanchi ... 1st Respondent/Petitioner

2.Singaram @ Singaravelu ... 2nd Respondent in
C.M.A.No.1791 of 2009/
1st Respondent

Prayer in C.M.A.No.1790 of 2009:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 21.12.2006 and made in M.A.C.T.O.P.No.34 of 2005 on the file of the Additional District Court, (Fast Track Court No.2) Cuddalore.

Prayer in C.M.A.No.1791 of 2009:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 21.12.2006 and made in M.A.C.T.O.P.No.313 of 2005 on the file of the Additional District Court, (Fast Track Court No.2) Cuddalore

For Appellant : Mr.S.Vadivel
in both appeals

For Respondents : Mrs.P.Thamizhendhi
For R1 in both appeals

COMMON JUDGEMENT

The instant appeals have been filed by the Insurance company challenging the common award dated 21.12.2006, passed by the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.2, Cuddalore in M.A.C.T.O.P.No.34 of 2005 and M.A.C.T.O.P.No.313 of 2005.

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

The first respondent in both the appeals sustained injuries on 31.12.2001, as a result of an accident caused by a vehicle bearing Registration No. TNP 4544, while they were travelling in the bullock cart, one as a rider and another as an occupant. The first respondent in both appeals preferred separate claims before the Motor Accident Claims Tribunal, Cuddalore District seeking compensation. The first respondent in C.M.A.No.1790 of 2009, who was the rider of the bullock cart sought a compensation of Rs.5,00,000/- and the first respondent in C.M.A.No.1791 of 2009, who was the occupant of the bullock cart also sought a compensation of Rs.5,00,000/-.

3. The Motor Accident Claims Tribunal, Cuddalore by its common award dated 21.12.2006 in M.A.C.O.P.Nos.34 and 313 of 2005, directed the appellant to pay the first respondent in C.M.A.No.1790 of 2009, a sum of Rs.76,600/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization and also directed the appellant to pay the first respondent in C.M.A.No.1791 of 2009 a sum of Rs.1,80,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization. Aggrieved by the common award dated 21.12.2006, passed in M.A.C.T.O.P.Nos.34 & 313 of 2005, the instant appeals have been filed by the insurance company.

4. Heard, Mr.S.Vadivel, learned Counsel appearing for the appellant and Mrs.P.Thamizhendhi, learned Counsel appearing for the first respondent in both appeals.

5. According to the learned counsel for the appellant, the Tribunal, under the impugned common award, has awarded excess compensation to the first respondent in both appeals. According to him, the Tribunal has erroneously awarded a sum of Rs.76,600/- to the first respondent in C.M.A.No.1790 of 2009 for the 35% of disability. Similarly, the learned counsel further contended that the Tribunal has erroneously assessed the disability of the first respondent in C.M.A.No.1791 of 2009 at 75%, based on the disability certificate produced by the first

respondent before the Tribunal. According to him, the injuries sustained by the first respondent in C.M.A.No.1791 of 2009 is only a simple injury. Further the learned counsel would contend that the monthly income of the first respondent in C.M.A.No.1791 of 2009, was assessed by the Tribunal without any basis. Further, the learned counsel for the appellant would contend that there was a delay of 16 days in registering the First Information Report and in the FIR, the description of the vehicle has not given.

6. This Court after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:

a) It is an undisputed fact that the first respondent in both appeals sustained injuries as a result of an accident caused by a vehicle insured with the appellant. According to the first respondent in both the appeals, they had sustained injuries as disclosed in the claim petition filed before the Tribunal. The first respondent in both the appeals have also filed the disability certificate before the Tribunal, which were marked as exhibits in Ex.P.6 and Ex.P.8.

b) The first respondent in C.M.A.No.1790 of 2009 as per the disability certificate has suffered disability of 35 % and the first respondent in C.M.A.No.1791 of 2009 has suffered disability of 75%. For both the case, disability certificates were marked as exhibits Ex.P.6 and Ex.P.8, and the Tribunal has taken note of the same and only thereafter, the Tribunal assessed the compensation payable to the respective claimants. No contra evidence has been produced by the appellant before the tribunal to disprove the disability of the first respondent in both appeals.

c) Before the Tribunal, the first respondent in both appeals have filed documents, which were marked as Exs.P1 to P12. On the side of the appellants, no document was filed. The first respondent in both the appeals have also examined witnesses including the Doctor.

c) Even though the FIR does not disclose description of the vehicle, the charge sheet, which confirms that the vehicle insured with the appellant was involved in the accident which resulted in injury sustained by the first respondent in both appeals.

d) The Tribunal has awarded a compensation of Rs.76,600/- to the first respondent in C.M.A.No.1790 of 2009, ie., Rs.54,600/- towards disability and Rs.12,000/- towards yearly loss of income and Rs.10,000/- towards pain and suffering. The Tribunal has awarded a sum of Rs.1,80,000/- as compensation to the first respondent in C.M.A.No.1791 of 2009 ie., Rs.1,53,000/- towards disability and Rs.12,000/- towards yearly loss of income and

Rs.15,000/- towards pain and suffering and mental agony. In both the cases, the first respondent have sustained fractures. The first respondent in C.M.A.No.1790 of 2009 has suffered left leg both bones fracture. The first respondent in C.M.A.No.1791 of 2009 has suffered fracture right leg below, as a result of the accident. No contra evidence has been produced by the appellant before the Tribunal to disprove the injury sustained by the first respondent in both the appeals.

7. In the light of the above observations, this Court is of the considered view that the compensation awarded by the Tribunal is a just compensation to the first respondent in both appeals and there is no merit in the instant appeals. Accordingly, the appeals are dismissed. The appellant Insurance company is directed to deposit the entire award amount, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent in both the appeals are permitted to withdraw the entire award amount by filling an appropriate application. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kyl/rts

To

1. The Additional District Judge/
Fast Track Court No.2, Cuddalore.
2. The Record Clerk,
VR Section,
Madras High Court. (2 Copies)

C.M.A.Nos.1790 & 1791 of 2005

GJII (Co)
CS/13/12/2018

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