

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.2288 of 2015

National Insurance Co.Ltd.,
Divisional Office-1,
LRN Complex,
Saradha Lodge Main Road,
Salem-7.

... Appellant/2nd Respondent

Vs.

1.V.Karthikeyan .. 1st Respondent/Petitioner

2.S.Yuvaraj ... 2nd Respondent/1st Respondent
(R2 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 19-3-2015 made in M.C.O.P.No.1924 of 2013 on the file of the II Special Subordinate Judge, (Motor Accidents Claims Tribunal), Salem.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.C.Kulanthaivel

For R2 : Ex-parte

सत्यमेव जयते
J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 19-3-2015 made in M.C.O.P.No.1924 of 2013 on the file of the II Special Subordinate Judge, (Motor Accidents Claims Tribunal), Salem.

2.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.1924 of 2013 on the file of the II Special Subordinate Judge, (Motor Accidents Claims Tribunal), Salem. The 1st respondent has filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries suffered by him in the accident that took place on 21.09.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the negligence on the part of the driver of the 2nd respondent and held that appellant-Insurance Company is liable to pay a sum of Rs.4,33,000/- as compensation to the 1st respondent.

4.Aggrieved by the said award, the appellant-Insurance Company has come out with the present appeal.

5.According to the learned counsel for the appellant, the accident occurred only due to the rash and negligent driving by the 1st respondent. He drove the vehicle in a rash and negligent manner and dashed against the back side of the TATA-ACE belonging to the 2nd respondent. The 1st respondent is the tort-feaser and he is not entitled to any compensation for his own fault. The 1st respondent is entitled to a compensation of Rs.25,000/- under 'no fault liability'. In any event, the Tribunal ought to have fixed contributory negligence on the part of the 1st respondent. The Tribunal has failed to properly appreciate the fact that a criminal case was closed stating that the 1st respondent was responsible for the accident and the Tribunal without appreciating the evidence of R.W.1 to R.W.3 and documents filed by the appellant and without any valid grounds, rejected the evidence of R.W.3. In any event, the compensation awarded by the Tribunal is excessive.

6.In support of his contentions, the learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court in Nishan Singh and others Vs. Oriental Insurance Co. Ltd., and others reported in 2018 1 TN MAC 745 (SC):

"12.The next question is whether the Tribunal should have at least answered the issue of Contributory Negligence of the Truck Driver in favour of the Appellants (Claimants). The question of Contributory Negligence would arise when both parties are involved in the accident due to rash and negligent driving. In a case such as the present one, when the Maruti Car was following the Truck and no fault can be attributed to the Truck Driver, the blame must rest on the Driver of the Maruti Car for having driven his vehicle rashly and negligently. The High Court has justly taken note of the fact that the Driver and Owner of the Maruti Car, as well as Insurer of that vehicle, had not been impleaded as parties to the Claim Petition. The Tribunal has also taken note of the fact that in all probability, the Driver and Owner of the Maruti Car were not made party being close relatives of the Appellants. In such a situation,

the issue of Contributory Negligence cannot be taken forward.

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15. For the reasons mentioned above, this Appeal is partly allowed. The appellants are granted limited relief under Section 140 of the Act. The respondents Nos. 2 & 3 are made jointly and severally liable to pay a sum of Rs. 50,000/- to the appellants towards compensation under Section 140 of the Act, on account of the death of Balvinder Kaur in the accident which occurred on 28th November 2010, along with interest at the rate of 9% from the date of filing of the Claim Petition till realization."

7. Per contra, the learned counsel for the 1st respondent contended that the 1st respondent as P.W.1 has proved the manner in which the accident occurred and First Information Report is lodged only against the driver of the 2nd respondent. He also contended that the driver of the TATA-ACE suddenly turned the vehicle and due to the same, accident occurred. The appellant has not let in any evidence to prove that accident occurred only due to the rash and negligent driving by the 1st respondent. The driver of the TATA-ACE belonging to the 2nd respondent has not made any complaint against the 1st respondent. In view of the same, the judgment relied on by the learned counsel for the appellant is not applicable to the facts of the present case. R.W.2, the Sub-Inspector of Police has not filed final report. No notice has been issued to the complainant. The Tribunal has awarded proper compensation and the same is not excessive and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellant as well as the 1st respondent and perused the materials available on record.

9. The contention of the learned counsel for the appellant is that it is the 1st respondent who drove the two-wheeler in a rash and negligent manner and dashed against the TATA-ACE belonging to the 2nd respondent and caused accident. After investigation, the criminal case was closed on the ground that the 1st respondent was responsible for the accident. To substantiate this contention, the appellant has examined 3 witnesses.

10. From the materials on record, it is seen that R.W.1 in the cross-examination has admitted that closure report was not sent to the concerned Court even after 14 months and that no notice was sent to the complainant. In view of such admission, the Tribunal rejected the contention of the appellant that in the final report it is stated that accident occurred only due to the negligence on the part of the 1st respondent. The Tribunal

rejected the evidence of R.W.3, as he was an interested witness. The Tribunal also took note of the fact that the driver of the TATA-ACE did not lodge any complaint against the 1st respondent for having caused the accident. The appellant has not examined any independent eye-witness to substantiate their claim. The Tribunal has considered the entire materials on record in proper perspective and held that the driver of the TATA-ACE is responsible for the accident and given cogent and valid reason for the said finding. In view of the above, the judgment relied on by the learned counsel for the appellant is not applicable to the facts of the present case and hence, there is no reason warranting interference by this Court to set aside the award of the Tribunal.

11.As far as the quantum of compensation is concerned, the Tribunal considering the educational qualification of the 1st respondent, the nature of injuries, treatment taken, evidence of P.W.2, Doctor and the disability certificate produced by the 1st respondent, awarded compensation under different heads. The amounts awarded by the Tribunal is not excessive and hence, the same are confirmed.

12.In the result, the Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is confirmed. The appellant-Insurance Company is directed to deposit the entire award amount to the credit of M.C.O.P.No.1924 of 2013, on the file of II Special Subordinate Judge, (Motor Accidents Claims Tribunal), Salem, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the 1st respondent/claimant is entitled to withdraw the award amount, less the amount already withdrawn, if any, with interest by making necessary application before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.1924 of 2013, if the entire award amount has already been deposited by them. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

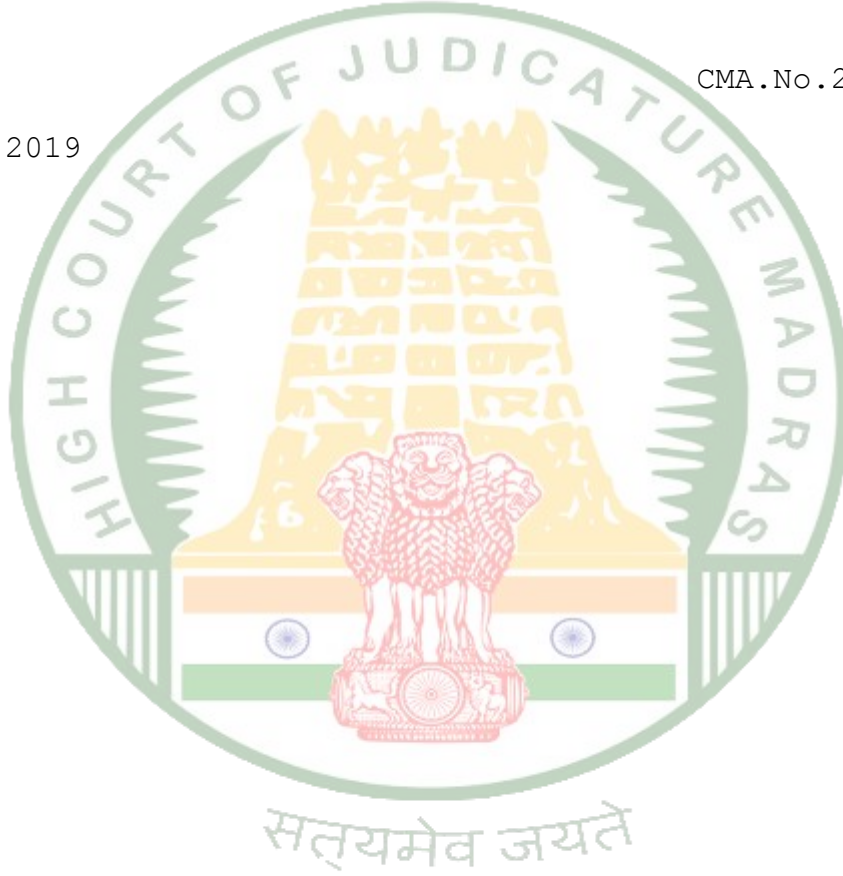
The II Special Subordinate Court,
(Motor Accidents Claims Tribunal),
Salem.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.S.Arun Kumar, Advocate SR.No.77456
+1 cc to M/s.C.Kulanthaivel, Advocate SR.No.77375

RJI (CO)
CSL/28.01.2019

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