

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1989 of 2009
and M.P.No.1 of 2008

National Insurance Company Limited,
Represented by its Branch Manager,
Anuradha Complex, 3rd Floor,
333 Bangalore Road, Krishnagiri. .. Appellant

Vs.

1.Govindan

2.K.Preuma ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the decree and Judgment, passed in MACT O.P.No.316 of 2007 dated 06.01.2009, on the file the Motor Vehicle Accidents Claims Tribunal, Additional District Judge, Dharmapurai.

For appellant : M/s.N.B.Surekha

For Respondents : Mr.M.Selvam

J U D G M E N T

The appellant-Insurance company is aggrieved by the fair and decretal order dated 06.01.2009, passed by the Motor Accident Claims Tribunal, (Additional District Judge), Dharmapuri in M.C.O.P.No.316 of 2007. For brevity hereinafter referred to as the Tribunal and the impugned order respectively.

2. By the impugned order, the Tribunal has awarded a sum of Rs.80,000/- as compensation to the 1st respondent herein.

3. When the case was called today, learned counsel M/s.N.B.Surekha appeared for the appellant-Insurance Company and Mr.M.Selvam, learned counsel appeared for the 1st respondent and made their respective submissions.

4.Details of the amounts claimed by the 1st respondent and the amounts awarded by the Tribunal are as follows:

		As per Claims	Awarded in the impugned order
1.	Partial loss of earning	Rs.20,000/-	Nil
2	Pain and suffering	Nil -	Rs.10,000/-
3.	Transport to Hospital	Rs. 10,000/-	Nil
4.	Extra nourishment	Rs. 10,000/-	Nil
5.	Damage to clothing and articles	Rs. 2,000/-	Nil
6.	Others i) Medical Expenses ii) Future Medical Expenses	Rs. 50,000/- Rs. 20,000/-	Nil Nil
7.	Attender charges	Rs. 10,000/-	
8.	Compensation for pain and sufferings	Rs.2,00,000/-	Nil
9.	Compensation for continuing and permanent disability	Rs.5,00,000/-	Rs.70,000/-
10.	Compensation for loss of future earning power	Rs.5,00,000/-	Nil
	Total	Rs.13,22,000/-	Rs.80,000/-

5. Though the claim amount in the petition was quantified as above for Rs.13,22,000/-, the 1st respondent restricted the claim to Rs.5,00,000/-.

6. It was the case of the 1st respondent-claimant that on 4.4.2007 at about 4:30 PM while walking on the road, driver Venkatesh of a share auto belonging to the 2nd respondent and insured with the appellant knocked the 1st respondent from behind and injured him.

7. The 1st respondent claimed to have suffered injuries including permanent disability to the extent of 35% on account of the accident.

8.Under these circumstances, a claim petition dated 18.8.2007 filed before the Tribunal by the 1st respondent herein.

9.The appellant being the insurer of the vehicle resisted the claim unsuccessfully before the Tribunal.

10. Heard the respective counsel for the appellant and the respondent.

11. The appellant would submit that as per Ex.P2 Hospital Admission extract dated 04.02.2007, records that the 1st respondent-claimant sustained injury while travelling in the share auto as a passenger. However, in the claim petition, the 1st respondent stated that he was knocked down by the share auto from the behind.

12. It was therefore the appellant that the 1st respondent contradicted himself under these circumstances, it was stated that the 1st respondent was not entitled to get compensation.

13. It was further submitted on behalf of the Appellant that the share auto travelled beyond the permit limits and that was overloaded with 8 persons as against 3+1 and therefore the appellant was not liable to pay compensation to the 1st respondent-claimant herein.

14. In the proceeding before the Tribunal, the administrative officer of the appellant deposed evidence as D.W.1 and stated in his evidence that the share auto indeed was driven in a negligent manner by the driver by loading more passengers, which included the 1st respondent claimant herein and therefore in view of the violation of the permit both in terms of the jurisdiction and the number of passengers who travelled the appellant cannot be held responsible to pay compensation for the accident.

15. The counsel for the 1st respondent submitted that there are no merits in the arguments and the grounds of the appeal. On the other hand, the learned counsel requested for enhancement of compensation in view of the law settled by the Hon'ble Supreme Court in the recent past.

16. After perusing the impugned order and the grounds of appeal and arguments advanced, it is noticed that the Tribunal considered Ex.P.1- FIR, deposition of the 1st respondent-claimant and the evidence on record concluded that the share auto's driver was indeed rash and negligent while causing accident to the 1st respondent-claimant herein was therefore entitled to get compensation.

17. The discrepancy between of hospital admission extract vide Ex.P.2 and the claim statement regarding the mode of accident is of no significance as the author of the said extract at the time of the admission into the hospital has not been examined as a witness. It merely establishes admission

to the hospital for further treatment.

18. Further, the Ex.P.1-FIR, corroborates with the 1st respondent-claimant's version of the accident. Therefore, in view of Ex.P.1-FIR the discrepancy pointed out between Ex.P.4 hospital admission extract and the claim statement is of no significance and pales out to that extent.

19. It is further noticed that D.W.1 an officer of the appellant who deposed evidence was not an eye witness of the accident. He has merely given his version of the accident based on the information furnished to him in his office.

20. Therefore, even if the Tribunal are not bound by the strict principles of the Evidence Act, 1872, statement of a person who had no direct knowledge of the accident has no evidentiary value. Therefore, deposition of such an officer of the appellant insurance company has no evidentiary value.

21. The appellant ought to have produced reliable witness to discredit the 1st respondent-claimant's case. In absence of any independent reliable witness, the evidence of such an officer of the appellant has no significance.

22. There is no evidence that the auto had either carried more passengers than the numbers prescribed in the permit or that the 1st respondent-claimant was a passenger travelling in it. Preponderance of probability indicates that the accident occurred on account of the negligence of the auto as claimed by the 1st respondent-claimant.

23. That being so, there are no justifiable reason to disagree with the views of the Tribunal. Therefore, the plea of the appellant that it was not liable to pay compensation cannot be accepted.

24. The amount awarded towards the injury at Rs.80,000/- has been questioned as excess.

25. The Ex.P.5 wound certificate indicates that out of 5 injuries, three injuries are grievous in nature and rest of the injuries are simple in nature. Therefore, on a conjoint reading of the Ex.P.2 hospital admission extract and Ex.P.4 wound certificate the compensation awarded appears to be just and fair. Ex.P.6 permanent disability certificate given by P.W.2 physician is libale to be eschewed as the assessment of disability at 35% is questionable in view of Ex.P.2 and Ex.P.5.

26. The amount of Rs.70,000/- awarded for three grievous injuries appears to be just and fair. The prayer of the appellant to set aside the amount awarded by the Tribunal to the extent of Rs.70,000/- is therefore rejected. Consequently, the prayer for enhancement of compensation also cannot be entertained.

27. Accordingly, this civil miscellaneous appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/--

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kkd
To

The Additional District Judge,
Motor Accidents Claims Tribunal,
Dharmapurai.

+1cc to Mr.Selvam, Advocate SR.NO.43657
+1cc to Ms.N.B.Sureka Advocate SR.NO.43399

MG (CO)
sm:27.8.2018

C.M.A.No.1989 of 2009

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