

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.203 of 2008

and

M.P.No.1 of 2008

The New India Assurance Co. Ltd.,
2nd Line Beach, No.45, Moore Street,
Chennai-600 001.

... Appellant /
2nd Respondent

Vs

1.Dr.Gurumoorthy (died)

... 1st Respondent/
Petitioner

2.B.Nandakumar

3.G.Ananthalakshmi

4.R.Veeralakshmi

5.L.Umasankari

6.C.Vidya Thathalakshmi

7.G.Gayathri

8.G.Kalyanan

... 2nd Respondent /
1st Respondent

(Respondents 3 to 8 brought on record on legal heirs
of 1st respondent vide order dated 12.6.2018 in
CMP.Nos.1 and 2 of 2009)

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988 against the award dated 29.08.2007 passed in
M.C.O.P.No.4129 of 2002 on the file of the Motor Accident Claims
Tribunal (III Small Causes Court), Chennai.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.G.Krishna Raja
for respondent Nos.1, 3 to 6

JUDGMENT

Calling into question the award dated 29.08.2007 passed by
the Tribunal in M.C.O.P.No.4129 of 2002, the appellant insurance
company has filed the present appeal.

2. The deceased first respondent is the claimant and he filed the claim petition claiming compensation of Rs.3,00,000/- for the injuries sustained by him in the accident occurred on 14.5.2002.

3. Heard the learned counsel for the appellant and the learned counsel for respondent Nos.1, 3 to 8.

4. The learned counsel for the appellant submitted that the Tribunal erred in coming to the conclusion that the accident occurred only due to rash and negligent driving of the driver of the auto bearing registration No.TN-01 M 7024 belonging to the second respondent and insured with the appellant despite the fact that the accident occurred due to rash and negligent driving of the driver of Maruti car bearing registration No.TN-37 R 2277. He would submit the Tribunal erred in granting a total compensation of Rs.1,84,724/- to the first respondent for the alleged injuries sustained by him in the accident and thus, prayed for setting aside the award passed by the Tribunal.

5. Per contra, the learned counsel for the respondents 3 to 8 submitted that considering the nature of injuries sustained by the deceased first respondent, the Tribunal awarded total compensation of Rs.1,84,724/- and since the said amount awarded by the Tribunal is based on documentary evidence, there is no need to interfere with the same. As far as the negligence attributed on the driver of the auto, the learned counsel for the respondents 3 to 8 submitted that the first respondent and his family members were travelling in the auto in question on the fateful date and while the auto was nearing Thousand Lights Police Station, the driver of the auto drove the same in a rash and negligent manner and hit the centre median. Due to the same, the auto went uncontrollable crossing the centre median of the road and caused the accident. Thus, the Tribunal was right in fastening the liability on the appellant, who is the insurer of the auto in question.

6. Though the appellant denied the negligence of the driver of the auto, it has not adduced any oral and documentary evidence to prove their claim. On the other hand, the evidence of the deceased first respondent and one Mahalakshmi, who was examined as P.W.1 and also Ex.P4-FIR clearly prove that the accident occurred due to rash and negligent driving of the driver of the auto. When there is no rebuttal evidence adduced on the side of the appellant, the Tribunal was right in holding that the accident occurred due to rash and negligent driving of the driver of the auto.

7. In the case on hand, pending appeal the first respondent/claimant died and his legal heirs were brought on record as respondent Nos.3 to 8.

8. The Tribunal awarded Rs.1,74,724/- towards medical expenses. In addition, the Tribunal awarded Rs.10,000/- towards pain and suffering. Thus, the Tribunal awarded total compensation of Rs.1,84,724/- in favour of the deceased first respondent. It is stated in the claim petition that the first respondent sustained injuries over the root of the nose and on the left foot and multiple injuries all over the body. The first respondent admitted in the hospital on 14.5.2002 and discharged on 16.5.2002 and in Ex.P10-discharge summary, it has been stated that the first respondent sustained minor abrasions on the face and on the left chin. P.W.3-Doctor assessed the disability at 40% and issued the disability certificate. Finding that the first respondent had sustained only simple injuries, the Tribunal discarded the disability certificate issued by P.W.3-Doctor. However, the Tribunal awarded Rs.1,74,724/- towards medical expenses.

9. The learned counsel for the appellant submitted that the Tribunal erred in granting Rs.1,74,724/- towards medical expenses. Though the first respondent produced Ex.P11-medical bills before the Tribunal, the Tribunal erred in granting Rs.1,74,724/-. In the claim petition, the first respondent, claimed Rs.25,000/- towards medical expenses. However, the Tribunal without properly appreciating Ex.P11, awarded Rs.1,74,724/- towards medical expenses and the same warrants interference.

10. In the present case, the first respondent has not established the permanent disability. Therefore, this Court finds that the total compensation of Rs.1,84,724/- awarded by the Tribunal is on the higher side when there was no permanent disability sustained by the first respondent. Therefore, it would be appropriate to award a sum of Rs.1,10,000/- towards the injuries sustained by the deceased first respondent in the accident considering the facts and circumstances of the case, which is inclusive of Rs.10,000/- towards pain and suffering.

11. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.1,84,724/- awarded by the Tribunal is reduced to Rs.1,10,000/- payable with interest at the rate of 7.5% per annum from the date of filing claim petition till the date of deposit. No costs. Consequently, connected miscellaneous petition is closed.

12. It is stated by both sides that pursuant to the award, the appellant insurance company had deposited the entire amount before the Tribunal. It is seen that while the first respondent alive, he had filed M.P.No.2 of 2008 before this Court to permit him to withdraw Rs.1,00,000/-. By an order dated 23.04.2008, this Court, though initially permitted the first respondent to withdraw Rs.1,00,000/-, subsequently, directed to withdraw Rs.10,000/- with proportionate accrued interest and costs and the remaining amount ordered to be invested in anyone of the nationalised bank. Accordingly, the first respondent said to have withdrawn Rs.10,000/- with accrued interest.

This Court now permitted the respondents 3 to 8 to withdraw the balance amount of Rs.1,00,000/- with accrued interest lying in M.C.O.P.No.4129 of 2002 on the file of the III Small Causes Court, Chennai. The appellant insurance company is permitted to withdraw the excess amount of Rs.74,724/- lying in M.C.O.P.No.4129 of 2002 with accrued interest, if any.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accidents Claims Tribunal,
III Small Causes Court,
Chennai.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.G.Krishna Raja, Advocate, S.R.No.55627

+1 cc to Mr.R.Sivakumar, Advocate, S.R.No.55579

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C.M.A.No.203 of 2008 and
M.P.No.1 of 2008

AD(CO)
SSM(18/03/2019).