

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2865 of 2009

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

... Appellant

Vs

1. G. Selvam
2. Muthamil Selvan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the learned Motor Accidents Claims Tribunal (II Judge, Small Causes Court), Chennai in M.C.O.P. No. 2214 of 2004 dated 30.03.2009.

For Appellant : Mr.K.Padmanabhan

For Respondent 1 : A.N. Viswanatha Rao

For Respondent 2 : No appearance

J U D G M E N T

The instant appeal has been filed by the Appellant/Insurance Company challenging the award dated 30.03.2009, passed by the Motor Accident Claims Tribunal (II Court of Small Causes, Chennai) in M.C.O.P.No. 2214 of 2004. The brief facts leading to the filing of the instant appeal are as follows:-

2. The first respondent sustained injuries as a result of an accident that took place on 21.12.2003 at about 12.30 P.M., while he was travelling as a pillion rider in a motor cycle bearing registration No. TN05-B-9727, driven by the second respondent and insured with by the appellant. The first respondent preferred a compensation claim for a sum of Rs.2,50,000/- before the Motor Accident Claim Tribunal (II Court

of Small Causes, Chennai) in M.C.O.P.No. 2214 of 2004. The Motor accident Claim Tribunal by its award dated 30.03.2009 in M.C.O.P.No. 2214 of 2004 directed the appellant to pay the first respondent a sum of Rs. 56,000/- together with interest at the rate of 9.5% per annum from the date of claim till the date of realization and also awarded costs in favour of the first respondent.

3. Aggrieved by the Award dated 30.03.2009 passed in M.C.O.P.No. 2214 of 2004, the instant appeal has been filed by the Insurance Company.

4. Heard Mr.K.Padmanabhan, learned Counsel for the Appellant and Mr.A.N.Viswanatha Rao, learned counsel for the first respondent. Despite service of notice on the second respondent and the name of the second respondent having been printed in the cause list today, none appears on the side of the second respondent.

5. According to the learned Counsel for the Appellant, the Tribunal failed to appreciate the evidence of the Sub-Inspector of Police, CCB, Chennai, who was examined as RW-3 and had deposed that the case has been registered in respect of the complaint given by the appellant regarding the non-involvement of the motor cycle insured with the appellant in the accident. The learned counsel for the appellant further contended that there was a delay in lodging an FIR and the delay of 112 days was not properly explained by the first respondent / claimant before the Tribunal. According to the learned counsel for the appellant under the afore mentioned circumstances, the claim of the first respondent was not maintainable and ought to have been dismissed by the Tribunal.

6. Per contra, the learned counsel for the first respondent would submit that the owner of the vehicle namely the second respondent was summoned by the appellant at their instance and he was examined as a witness and the appellant has also cross-examined the second respondent before the Tribunal. Further, the learned counsel for the first respondent would submit that the appellant has not disputed the injuries suffered by the first respondent as a result of the accident. Further, the learned counsel for the first respondent would contend that the first respondent before the Tribunal has examined two witnesses on his side and also filed six documents which were marked before the Tribunal as Exs.P1 to P6, which included the following:-

- a) True copy of discharge summary.
- b) Outpatient Chits
- c) copy of F.I.R
- d) copy of Charge Sheet
- e) Disability certificate
- f) x-ray.

7. According to the learned counsel for the first respondent, no contra evidence was available before the Tribunal, to establish that the vehicle insured with the appellant was not involved in the accident, which resulted in the first respondent sustained injuries. The learned counsel for the first respondent further contented that even though the claim was made for a sum of Rs.2,50,000/-, the Tribunal was awarded only a sum of Rs.56,000/-

8. 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) The nature of injuries sustained by the first respondent as a result of an accident, is not disputed by the appellant. The only contention of the appellant is that the vehicle which was insured with the appellant was not involved in the accident. Before the Tribunal, the appellant has summoned the owner of the vehicle namely the second respondent and they have also cross examined him. The evidence on record before the Tribunal will clearly establish that it was only a vehicle owned by the second respondent and insured with the appellant was involved in the accident, resulting in, causing injuries to the first respondent. The owner of the vehicle has never admitted in his evidence that his vehicle was not involved in the accident.

(b) The nature of injuries sustained by the first respondent is not disputed by the appellant. Even though the first respondent made a claim for a sum of Rs.2,50,000/-, the Tribunal has awarded only a sum of Rs.56,000/-.

(c) Considering the nature of injuries sustained by the first respondent, this Court is of the considered view that the compensation awarded by the Tribunal is a just compensation.

9. In view of the above observation, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the appeal is dismissed.

10. Accordingly the Appellant is directed to deposit the entire award amount passed by the Tribunal with interest to the credit of M.C.O.P.No. 2214 of 2004 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, after deducting the amount that has already been deposited by them 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 is permitted to withdraw the said deposited amount along with the accrued interest lying to the credit of M.C.O.P.No. 2214 of 2004 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai by filing an appropriate application. Consequently, connected miscellaneous

petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The II Judge,
(II Court of Small Causes),
Motor Accident Claims Tribunal
Chennai.

Copy To
The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.59260

C.M.A.No.2865 of 2009

VGI (CO)
GSP (02/11/2018)



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