

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2986 & 2987 of 2010 &
M.P.Nos.1 & 1 of 2010

The National Insurance Company Limited,
Rep. by its Manager, Tiruchengode.

...Appellant in both CMAs

...2nd Respondents in both MACT OP NOS

Vs.

1.Minor Bhuvaneswari, rep by her father, Madhu.

... 1st Respondent in C.M.A.No.2986 of 2010

...Petitioner in MACT OP.NOs.314/06

1.Raman

... 1st Respondent in C.M.A.No.2987 of 2010

...Petitioner in MACT OP.NOs.319/06

2.Shanmugasundaram

... 2nd Respondent in both CMAs.

...1st Respondents in both MACT OPs

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree passed in MACT O.P.Nos.314 & 319 of 2006 dated 04.09.2008, on the file of the Motor Vehicles Accident Claims Tribunal, Additional District Judge Court, Dharamapuri.

For Appellant in both CMAs : Mrs.N.B.Surekha

For Respondents in both CMAs : No appearance

J U D G M E N T

The instant appeals have been filed challenging the common Award dated 04.09.2008 passed by the Motor Accident Claims Tribunal, Additional District Judge Court, Dharamapuri, in MCOP Nos.314 & 319 of 2006.

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

2. The first respondent in both the appeals sustained injuries on 05.05.2005 while travelling in an Ambulance van bearing registration No. TN22-2959. The said Ambulance met with an accident due to the rash and negligent driving by the driver of a lorry bearing registration No.KA01-MH-5999 which dashed the Ambulance from behind. As a result of the accident, the first respondent in both the appeals sustained injuries. The first respondent in CMA.No.2986 of 2010 preferred a compensation claim in MCOP.No.314 of 2006 before the Motor Accident Claims Tribunal seeking a compensation of Rs.2,05,000/- which was restricted to Rs.50,000/- and the first respondent in CMA.No.2987 of 2010 preferred a compensation claim in MCOP.No.319 of 2006 before the Motor Accident Claims Tribunal seeking a compensation of Rs.5,10,000/- which was restricted to Rs.2,00,000/-. The Motor Accident Claims Tribunal by a common Award dated 04.09.2008 passed in MCOP.Nos.314 & 319 of 2006 directed the Appellant as well as the second respondent to pay the first respondent in CMA.No.2986 of 2010 jointly and severally a sum of Rs.10,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and also directed the Appellant as well as the second respondent to pay the first respondent in CMA.No.2987 of 2010 jointly and severally a sum of Rs.21,500/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

3. Aggrieved by the common Award dated 04.09.2008 passed in MCOP Nos.314 & 319 of 2006, the instant appeals have been filed.

4. Heard Mrs.N.B.Surekha, learned counsel for the Appellant in both the Appeals. There is no representation on the side of the respondents. Since batta has not been paid by the learned counsel for the Appellant, notice has not been served on the respondents.

5. According to the learned Counsel for the Appellant in both the appeals, the entire negligence was upon the driver of the Ambulance in which the first respondent in both the appeals were travelling. The learned counsel for the Appellant drew the attention of this Court to the sketch submitted by the police after the accident which was marked as Ex.R1 before the Tribunal. According to the learned counsel for the Appellant, as seen from the sketch, the lorry which was insured with the Appellant is far away from the Ambulance and therefore, it could be established that the lorry is not responsible for the accident, which resulted in injuries to the first respondent in both the appeals. Since the other grounds raised in both the appeals are covered by the decisions of this Court as well as

the decisions of the Hon'ble Supreme Court, the learned counsel for the Appellant was not pressing those grounds, during her argument.

6. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the learned counsel for the Appellant, observes the following:

(a) The nature of injuries sustained by the first respondent in both the appeals are not disputed by the Appellant before the Tribunal.

b) The first respondent in both the appeals have filed documents before the Tribunal which included the First Information Report, wound certificate and the copy of the insurance policy. Admittedly, the First Information Report has also been registered only against the driver of the lorry which was insured with the Appellant and the charge sheet has also been filed by the police against the said driver.

c) The Tribunal has given a clear finding that the sketch given by the police cannot be relied upon, since it would have been drawn only after the accident, which in the considered view of this Court is a correct finding.

d) Further the compensation awarded for both the claimants is a lesser sum than what was actually claimed by the respective claimants.

7. In the light of the above observations, this Court is of the considered view that the Award passed by the Tribunal under the common Award is a just compensation and there is no merit of the instant appeals. Accordingly, the appeals are dismissed without costs. Consequently, connected Miscellaneous Petitions are closed.

8. The Appellant as well as the second respondent jointly and severally are directed to deposit the amount awarded by the Tribunal together with interest, after deducting the amount that has already been deposited, to the credit of MCOP.No319 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Judge Court, Dharamapuri, 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 CMA.No.2987 of 2010 is permitted to withdraw the amount lying to the credit of MCOP.No.319 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Judges Court, Dharamapuri along with accrued interest by filing an appropriate application.

9. Since the first respondent in CMA.No.2986 of 2010 is a minor at the time of claim, the Appellant as well as the second respondent jointly and severally are directed to deposit the amount awarded by the Tribunal together with interest, after deducting the amount that has already been deposited, in any one of the Nationalised Bank till they attain majority to the credit of MCOP.No.314 of 2006 and father of the first respondent in CMA.No.2986 of 2010 is permitted to withdraw the interest accrued once in six months.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Vehicles Accident Claims Tribunal,
Additional District Judges Court,
Dharamapuri.

2.The Record Clerk,
VR Section,
High Court, Madras.

+2cc to Mr.N.B.Surekha, Advocate, S.R.No.62904 & 62905

C.M.A.Nos.2986 & 2987 of 2010
&

M.P.Nos.1 & 1 of 2010

NRI (CO)
GSP (25/10/2018)

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