

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.2667 of 2018
and CMP.No.20147 of 2018

United India Insurance Co. Ltd.,
Divisional Office No.1,
No.104-A, Ranga Building,
Peramanur Main Road,
Near Four Road, Salem 636 007. .. Appellant/2nd Respondent

1.Vasu @ Vasudevan Vs. ..1st Respondent/Petitioner

2.The Proprietor
M/s.S.N.B.Bus Service and Co.,
No.6, Behind Collectors Bungalow,
Yercaud Main Road, Salem Town,
Salem 636 008. .. 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 and decree dated 01.03.2018 made in M.C.O.P.No.2573 of 2015 on the file of the Special Subordinate Judge-I, (Motor Accidents Claims Tribunal), Salem.

For Appellant : Mr.C.Paranthaman

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 01.03.2018 made in M.C.O.P.No.2573 of 2015 on the file of the Special Subordinate Judge-I, (Motor Accidents Claims Tribunal), Salem.

2.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.2573 of 2015 on the file of the Special Subordinate Judge-I, (Motor Accidents Claims Tribunal), Salem. The 1st respondent filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.09.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident took place only due to the rash and negligent driving by the driver of the bus

belonging to the 2nd respondent and directed the 2nd respondent as well as the appellant to pay the compensation to the 1st respondent jointly and severally.

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

5. The learned counsel appearing for the appellant contended that the 1st respondent did not get injury due to the rash and negligent driving by the driver of the bus belonging to the 2nd respondent. The 1st respondent was standing in the bus without holding properly and when driver applied brake, he fell down and got injured. The First Information Report registered against the driver of the bus was closed as 'mistake of fact' and the police officials served R.C.S Notice No.156/2015 dated 29.10.2015. The appellant has let in evidence by examining R.W.1 and R.W.2. The Tribunal without appreciating the evidence of R.W.1 and R.W.2, erroneously held that due to the rash and negligent driving by the driver of the bus, the accident has occurred. The Tribunal failed to take note of the fact that as per the Motor Vehicle Inspector's report, there is no damage to the bus. The injuries sustained by the 1st respondent are not scheduled injuries. P.W.2- Doctor is not the Doctor who treated the 1st respondent and the percentage of disability certified by P.W.2 is excessive. The learned counsel further contended that the amounts awarded by the Tribunal under different heads are excessive.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. The 1st respondent contended that due to the rash and negligent driving by the driver of the bus belonging to the 2nd respondent, who applied sudden brake, he fell down and sustained injuries. The 1st respondent as P.W.1 has deposed to that effect. The appellant did not deny that 1st respondent fell down in the bus and sustained injuries. The appellant has not examined the driver or conductor of the bus or any passenger who travelled in the bus to prove their contention that due to negligence on the part of the 1st respondent, he fell down and sustained injuries. The contention of the learned counsel for the appellant that First Information Report registered against the driver of the bus was closed as 'mistake of fact' and therefore, the Tribunal ought to have dismissed the claim petition, is without merits. It is well settled that criminal proceedings is entirely different from proceedings initiated under the Motor Vehicles Act. The Tribunal has to appreciate the evidence let in by the parties and come to a conclusion with regard to negligence, without being influenced by the criminal proceedings and judgments therein. In the present case, the Tribunal has considered the evidence of P.W.1 and the failure on the part of

the appellant to let in any contra evidence, the Tribunal has held that the accident has occurred due to negligence on the part of the driver of the bus belonging to the 2nd respondent. There is no error in the said finding.

8.As far as the quantum of compensation is concerned, P.W.2-Doctor has certified that 1st respondent suffered 25.35% disability. The learned counsel for the appellant contended that the percentage of disability certified by the Doctor is excessive. The appellant has not examined any Doctor on their behalf to disprove the evidence of P.W.2-Doctor and certificates issued by him. Under such circumstances, the Tribunal accepting the evidence and certificate issued by P.W.2, rounded of the percentage of disability to 26% and awarded compensation. The amounts awarded under different heads are just compensation. There is no perversity in the award of the Tribunal warranting interference by this Court.

9.In the result, this Civil Miscellaneous Appeal is dismissed and the amount of Rs.2,43,810/- awarded by the Tribunal as compensation is confirmed. The appellant-Insurance Company as well as the 2nd respondent are directed to deposit the award amount with interest, jointly and severally, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2573 of 2015. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa
To

1. The Special Subordinate Judge-I,
(Motor Accidents Claims Tribunal), Salem.
2. The Section officer
VR Section, High Court, Madras 104.

+2 Ccs to Mr.C.Paranthaman, Advocate sr 79356.

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SP(11/01/2019)