



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.952 of 2018
and
C.M.P.(MD)No.10258 of 2018

National Insurance Company Limited,
Parameswaran Pillai Bhavan,
First Floor, Post Box No.157,
Hospital Road, Kollam,
Kerala-691 001,
Through its Divisional Manager.

... Appellant/2nd Respondent

Vs.

1.M.Kumar

... 1st Respondent/Petitioner

2.Srajudeen Kunju

... 2nd Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 18th day of June, 2010 made in M.C.O.P.No.1289 of 2008 on the file of the Motor Accident Claims Tribunal, (II Additional District Judge), Tirunelveli.

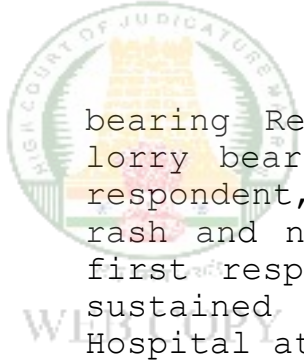
For Appellant : Mr.N.Murugesaan

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the award dated 18th day of June, 2010 made in M.C.O.P.No.1289 of 2008 on the file of the Motor Accident Claims Tribunal, (II Additional District Judge), Tirunelveli.

2.The appellant / Insurance Company is the second respondent in M.C.O.P.No.1289 of 2008. The first respondent is the claimant in the said claim petition, claiming a sum of Rs.7,00,000/- (Rupees Seven Lakhs Only) as compensation for the injuries sustained by him in the accident that took place on 27.06.2007.

3.According to the first respondent, on the date of accident at about 6.45 P.M., while he was proceeding in his TVS Motorcycle



bearing Registration No.TN-76-Z-8130 from Kadayam to Mukkudal, a lorry bearing Registration No.KL-05-0712, belonging to the second respondent, insured with the appellant, driven by its driver, in rash and negligent manner and in a high speed, dashed against the first respondent. Due to the said impact, the first respondent sustained multiple injuries and he was taken to Government TVMC Hospital at Tirunelveli and he was taking treatment as Inpatient for a period of one month. Due to the said injuries, he was not able to do his work as he was doing earlier.

4.Before the Tribunal, the first respondent herein examined himself as P.W.1, Dr.Ramaguru was examined as P.W.2, filed 8 documents and the same were marked as Exs.P.1 to P.8. The appellant did not let in any oral evidence documentary evidence.

5.The Tribunal considering the pleadings, both oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry, belonging to the first respondent and awarded a total sum of Rs.1,88,865/- (Rupees One Lakh Eighty Eight Thousand Eight Hundred and Sixty Five Only) under different heads as compensation to the first respondent, directing the appellant to pay compensation.

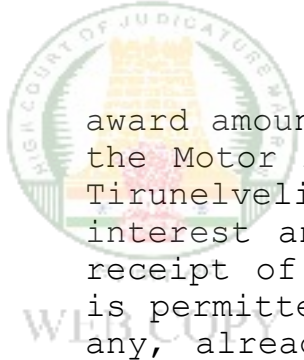
6.Aggrieved over the said award, the appellant / Insurance Company has come out with the present appeal.

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

8.The learned counsel appearing for the appellant contended that the Tribunal has failed to consider that P.W.2 was examined after a period of three years; the Tribunal failed to consider the non-production of medical records to show that the first respondent had taken treatment for five months from the Private Hospital; the Tribunal erred in awarding a sum of Rs.30,000/- (Rupees Thirty Thousand Only) for permanent disability and again awarded a sum of Rs.60,000/- (Rupees Sixty Thousand Only) for fracture and pain and sufferings; the Tribunal erred in awarding a sum of Rs.40,000/- (Rupees Forty Thousand Only) for small injuries and pain and sufferings; the Tribunal erred in awarding 9% interest instead of 7.5% interest.

9.These contentions are not acceptable. A criminal case was registered against the driver of the lorry, belonging to the first respondent. The appellant has not let in any contra evidence to disprove the contention of the first respondent. The Tribunal has considered the pleadings and oral and documentary evidence and nature of injuries in the proper perspective and has awarded compensation. The same is not excessive.

10.In the result, this Civil Miscellaneous Appeal is dismissed, directing the appellant / Insurance Company to deposit the entire



award amount to the credit of M.C.O.P.No.1289 of 2008 on the file of the Motor Accident Claims Tribunal / II Additional District Court, Tirunelveli, less the amount already deposited, if any, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the said award amount, less the amount, if any, already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The II Additional District Judge
Motor Accident Claims Tribunal,
Tirunelveli.

MYR

TE/SV/SAR-IV : 21/12/2018 : 3P/2C

*C.M.A. (MD) No. 952 of 2018
11.10.2018*