



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2018

CORAM

WEB COPY

THE HON'BLE **MS.JUSTICE V.M.VELUMANI**

CMA(MD) No.469 of 2013

National Insurance Company Limited,
Branch Office 1,
1/33, Promenade Road,
Trichy - 1

.. Appellant/2nd Respondent**-Vs-**

1.M.Mohammed Ali

.. 1st Respondent/Petitioner

2.M.Viswanathan

.. 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal - filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 28.06.2006 and made in M.C.O.P No.1391 of 2004 on the file of the Motor Accidents Claims Tribunal, III Additional Sub Court, Trichy.

For Appellant : Mr.Aathimoolapandian
For R1 : Mrs.J.Maria Roseline
(In SR Stage)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to set aside the award, dated 28.06.2006, made in in M.C.O.P No.1391 of 2004, on the file of the Motor Accidents Claims Tribunal, III Additional Sub Court, Trichy.

2. The appellant Insurance Company is the second respondent. The first respondent herein filed the said Claim Petition, claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.03.2004.

3. According to the first respondent, while he was travelling in the Car, a Bus belonging to the second respondent driven by its driver in a rash and negligent manner dashed against the Car and caused the accident. The second respondent is the owner of the Bus. The appellant is the insurer. In the accident, three occupants died and the first respondent sustained injuries.

4. The owner of the Bus remained ex-parte. The second respondent in the counter has stated that the accident occurred only due to the negligence of the driver of the Car and the accident did



not occur due to the negligence on the part of the driver of the bus.

5. Before the Tribunal, the first respondent examined himself as P.W.1 and one Chellakumar was examined as P.W.2 and one Doctor Rajendran was examined as P.W.3 and marked 21 documents as Ex.P.1 to Ex.P.21. The appellant did not let in any oral or documentary evidence.

6. The Tribunal, considering the pleadings, both oral and documentary evidence let in by the first respondent, held that the accident occurred only due to rash and negligent driving by the driver of the bus. Considering the nature of the injuries and percentage of disability certified by the Doctor, applied multiplier method and awarded a total sum of Rs.7,50,620/- as compensation.

7. Aggrieved by the said award, the appellant Insurance Company has come out with the present appeal.

8. Heard the learned counsel for the appellant and the first respondent and perused the materials available on record.

9. The contentions of the learned counsel for the appellant are that the appellant erred in fastening the entire negligence on the part of the driver of the Bus; the Tribunal ought to have held that both the drivers of Car and Bus are equally responsible for the accident; the Tribunal erred in adopting multiplier method; and in any event, the amount awarded by the Tribunal is excessive.

10. These contentions are not acceptable. P.W. 1 and P.W.2 have deposed as to how the accident has occurred and the driver of the bus is responsible for the accident. The appellant and the second respondent have not let in any contra evidence to disprove the contention of the first respondent. In view of the fact that the Tribunal has considered the entire materials on record and considering the nature of injuries sustained by the first respondent and percentage of disability at 97% as deposed by P.W.3 Doctor, rightly applied multiplier method. The Tribunal has fixed the notional income of the first respondent as Rs.6000/- per month, which is proper. The Tribunal has based on the materials on record awarded compensation under various heads which are just and proper.

11. In view of the above facts, there is no error warranting interference by this Court. This Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/



To,

1. The III Additional Sub Judge,
Motor Accidents Claims Tribunal,
Trichy.

2. The Record Keeper, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.K.Baskara Pandiyan, Advocate Sr.No.85684

+1cc to Mrs.J.Maria Roseline, Advocate Sr.No.85216

CM

VB/PM/SAR1/14.12.2018/3P/6C

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