IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.15 of 2006

The Branch Manager,
The New India Assurance Co.Ltd.,
39-C, Bye pass road,
Dharmapuri. .. Appellant /Respondent 2

Vs.

1. Parthiban ... 1st Respondent/Petitioner
2. Selvam ...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 Judgment and Decree dated 29.10.2004 made in MCOP.No.628 of 2003 on the file of the Motor Accident Claims Tribunal, First Additional District Judge, Krishnagiri at Dharmapuri.

For Appellant : Mr.K.Padmanabhan
For R1 : No appearance

J U D G M E N T

This appeal arises out of the judgment and decree dated 29.10.2004 passed by the Motor Accidents Claims Tribunal, I Additional District Court, Krishnagiri at Dharmapuri in MCOP.No.628 of 2003.

2.The case in brief, is as follows:

On the fateful day, i.e., on 03.08.2002, at about 09.30am, the first respondent/claimant engaged the goods auto to transport his newly purchased steel bureau from Dharmapuri to Morappur. While he was traveling in the goods auto bearing Registration No.TN65 A 6836 belonging to the second respondent and insured with the appellant insurance company, the driver of the vehicle drove it in a rash and negligent manner and without considering up and down and rough surface of the road with great speed and suddenly toppled on the road side. Due to the said impact, the first respondent/claimant sustained multiple injuries in all over his body. Claiming a compensation of Rs.5,00,000/-, he filed a claim petition before the Tribunal, which, on consideration of the materials and evidence available on record, awarded a total compensation of Rs.2,53,705/- with interest at the rate of 9% per annum from the date of petition. Challenging the same, the appellant Insurance Company has preferred this appeal before this Court.

3.The learned counsel for the appellant Insurance Company submitted that the first respondent/claimant/injured travelled in the goods vehicle as passengers and hence, the insurance company cannot be fastened with the liability to pay the compensation initially. In support of the said submission, he placed reliance on the decision of the Supreme Court in National Insurance Co.Ltd v. Swaran Singh [2004 (3) SCC 297]. The learned counsel also submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant.

4.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

5.Despite the service of notice and the name of the first respondent having been printed in the cause list, there is no representation on his behalf.

6.The learned counsel for the appellant Insurance Company has not disputed the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the goods vehicle and hence, the said finding of the Tribunal need not be interfered with by this Court.

7.The main contention of the learned counsel for the appellant insurance company is that the vehicle involved in the accident is a goods carriage vehicle and the injured has travelled in the same as unauthorised passenger. As per the insurance policy, the driver or owner of the vehicle has no right to carry passengers in the goods carriage. Whereas, in the case on hand, the owner of the vehicle allowed the injured to travel as passenger in the goods carriage vehicle, in violation of the policy conditions. As such, this Court is of the view that since the insurance policy was in force at the time of accident, the appellant insurance company has to pay the compensation to the injured initially and thereafter, recover the same from the owner of the vehicle. Accordingly, the finding of the Tribunal as regards the fastening liability on the appellant insurance company is hereby modified, with a right to recover the compensation payable to the injured claimant from the owner of the vehicle.

8.As regards the quantum of compensation, the first respondent/claimant himself examined as P.W.1, who deposed that he was aged 40 years and was earning a sum of Rs.5,000/- per month. However, no proof was produced to substantiate the same. P.W.2/Doctor, who examined the claimant, deposed in his evidence that the first respondent/claimant sustained the following grievous injuries:

(i) Sutured lacerated wound right side of fore head;
(ii) Deformity pain swelling of right are - fracture shaft of right humerus;
(iii) Posterior dislocation of right elbow;
(iv) Fracture neck of right rapius;
(v) Multiple abrasions upper lip right thigh and all over the body.

After assessing the first respondent/claimant, the doctor issued Ex.P6-disability certificate to the tune of 70%. Ex.P2 is wound certificate, which revealed that the first respondent/claimant sustained multiple injuries. The Tribunal, after taking note of the materials and evidence adduced by the first respondent/claimant, has fixed his monthly income at Rs.2,500/-, adopted the multiplier of 16 and taken permanent disability at 35%; and quantified the compensation under the head “loss of income due to disability” at Rs.1,68,000/- (Rs.30,000/- x 16 x 35/100). The Tribunal has rightly determined the income, adopted the multiplier and assessed the loss of income for the permanent disability suffered by the first respondent/claimant and hence, the same need not be interfered by this Court.

9.That apart, the Tribunal has awarded Rs.47,705/- towards medical charges, which is the actual medical expenses incurred by the first respondent/claimant for his treatment and hence, the same is hereby confirmed. Further, the Tribunal has quantified Rs.7,500/- towards loss of income during treatment period, Rs.1,000/- towards transportation, Rs.2500/- towards extra nourishment, Rs.2,000/- towards attendant charges, Rs.25,000/- towards pain and suffering and mental agony. Thus, the Tribunal has awarded the total compensation of Rs.2,53,705/- to the first respondent/claimant, which, in the opinion of this Court, are fair, just and reasonable and the same cannot be said to be excessive and exorbitant at any stretch of imagination, considering the nature of the injuries sustained by the first respondent/claimant and in the given facts and circumstances of the case and hence, the same do not call for any interference.

10.In such view of the matter, this appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant Insurance Company is directed to first deposit the entire award amount along with interest and costs, after deducting the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle, in the manner known to law. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the first respondent/claimant by the Tribunal, through RTGS within a period of one week thereafter.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional District Judge,
Motor Accident Claims Tribunal,
First Additional District Judge,
Krishnagiri, Dharmapuri.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.K.Padmanabhan, Advocate, S.R.No. 64648

C.M.A.No.15 of 2006

BR(CO)
GN(09/09/2020)