

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.07.2019

CORAM

THE HON'BLE MR. JUSTICE R.MAHADEVAN
Civil Miscellaneous Appeal Nos.1543 & 1544 of 2006

National Insurance Co. Ltd.,
751, Anna Salai
Chennai-2.

Appellant in both C.M.As/2nd respondent

Vs.

1.P.K.Pandiyan R1 in C.M.A.No.1543 of 2006/Claimant

Dhinesh R1 in C.M.A.No.1544 of 2006/Claimant

2.Iruthayanathan R2 in both C.M.As/1st respondent

Common Prayer: Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 13.01.2005 made in M.C.O.P.Nos.138 and 139 of 2003 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ponneri.

For Appellant : Mr.S.Arunkumar
in both appeals
For R2 : No Appearance

COMMON JUDGMENT

The case in brief, is as follows:

On 25.04.2003, at about 14.30 hours, the first respondent in C.M.A.No.1543 of 2006 was riding the motorbike bearing Reg.No.TN-09-V-1662 to Kalpakkam. The first respondent in C.M.A.No.1544 of 2006 was travelling as a pillion rider in the said motorbike. At that time, the lorry bearing Reg.No.TN-51-Z-2287, belonging to the second respondent in these appeals and insured with the appellant Insurance Company, came in a rash and negligent manner at high speed and dashed against the motorbike. Due to the said impact, both the rider and the pillion rider sustained injuries. They filed separate claim petitions before the Tribunal. Considering the materials and evidence available on record, the Tribunal has a total compensation of Rs.3,14,240/- to the first respondent in C.M.A.No.1543 of 2006 and a sum of Rs.1,47,440/- to the first respondent in C.M.A.No.1544 of 2006, with interest at the rate of 9% from the respective dates of the claim petitions.

2.Challenging the same, the appellant Insurance Company has come up with these appeals.

3.Despite notice being ordered on the respondents, they have not been served with papers till now. However, considering paucity of time, these appeals are taken up for final disposal, on merits, as the same will not in any way affect the respondents herein.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in holding that the driver of the lorry was rash and negligent and was responsible for the accident. He also submitted that the compensation awarded by the Tribunal is exorbitant and excessive.

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

6.A perusal of the common award passed by the Tribunal would disclose the following factors:

(1) The nexus of the accident was proved by way of the evidence of PW1 and PW2, Exhibits P1, P2, P11, First Information Report and dual Accident Registers.

(2) The evidence of PWs 1 and 2 corroborates with that of Exhibit P1 the First Information Report.

(3) The manner of accident, as alleged by the claimants, lies on a narrow compass and the same was accepted by the Tribunal.

(4) Placing reliance on the evidence and documents, the Tribunal has fastened the liability on the second respondent / owner of the vehicle and the appellant Insurance Company.

7. This Court is of the view that such a finding arrived at by the Tribunal is based on the evidence and documents adduced and hence, interference is uncalled for.

8.As far as the quantum of compensation arrived at by the Tribunal is concerned, the Tribunal by taking note of the evidence of P.W.3-Doctor coupled with Exhibits 3,5,6,12,14,15 & 17 has arrived at the quantum.

9.In respect of the claimant in CMA No.1543 of 2006, since there was no evidence to substantiate that he was earning a sum of Rs.10,000/- per month by his own business, the Tribunal has fixed the monthly income of the claimant at Rs.1800/-, adopted the multiplier of 16 and has arrived at the sum of Rs.1,38,240/- towards loss of income for 40% disability, assessed by the Doctor. Further, the Tribunal has awarded sums of Rs.1,50,000/- towards Medical Expenses, Rs.5000/- towards transportation, Rs.10,000/- towards extra nourishment, Rs.1000/-towards damage to clothes and Rs.10,000/- towards pain and suffering. The Tribunal has rightly considered the materials and evidence, correctly assessed the income of the injured, adopted the correct multiplier and arrived at the compensation towards loss of income. The amounts awarded by the Tribunal towards other

heads are also very reasonable and hence the same are confirmed.

10. In respect of the claimant in CMA No.1544 of 2006, even though no document has been filed to substantiate that he was studying in the Pachaiyappa's College, taking note of his age, ie., 23 years, the Tribunal observed that he would not be earning since he being a student and thereafter fixed his daily income at Rs.40/- and calculated the monthly income at Rs.1,200/-, adopted the multiplier of 17 and has arrived at the sum of Rs.73,440/- towards loss of income for 30% disability, assessed by the Doctor. Further, the Tribunal has awarded sums of Rs.50,000/-, Rs.3,000/-, Rs.10,000/-, Rs.1,000/- and Rs.10,000/- towards medical expenses, transportation, Extra nourishment, damage to clothes and pain and suffering, respectively. The Tribunal has rightly considered the materials and evidence, correctly assessed the income of the injured, adopted the correct multiplier and arrived at the compensation towards loss of income. The amounts awarded by the Tribunal towards other heads are also very reasonable and hence the same are confirmed.

11. In the result, both the appeals are dismissed. No costs. The appellant Insurance Company is directed to deposit the entire compensation amounts, along with interest and costs, as awarded by the Claims Tribunal, less the amounts already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent in these appeals / claimants are permitted to withdraw the same on making proper application before the Tribunal.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

srk / vsn

To

1. The Judge, Motor Accident Claims Tribunal,
Subordinate Court, Ponneri.

2. The Section Officer
V.R. Section, Madras High Court
Chennai 104.

+1cc to Mr.S.Arun kumar , Advocate SR.No. 64754

C.M.A.Nos.1543 & 1544 of 2006

A.SK(27/08/2020)