

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3675 of 2004

and

C.M.P.No.19731 of 2004

National Insurance Company Ltd.,
Salem 1.

... Appellant

Vs.

1.Kumaraswamy
2.Baskar

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.06.2003 in M.C.O.P.No.518 of 2003 on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Namakkal.

For Appellant : Mr.Sunilkumar

For R1 : Mrs.P.T.Ramadevi

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 27.06.2003 passed by the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.3, Namakkal, in M.C.O.P.No.518 of 2003.

2.The case in brief, is as follows:

The first respondent, by name, Kumaraswamy, aged 45, working as driver, earning Rs.4,000/- plus Rs.100/- daily as batta, met with an accident on 21.07.2001, at about 06.00pm, near Thasanaickenpatti Burial Ground, due to collision of the Car bearing Registration No.TN 28/C-7557 with the Tempo Van bearing Registration No.TN45/D-1345. According to him, he was the driver of the said Car and due to the rash and negligent driving of the driver of the Tempo Van, the accident had occurred and he suffered grievous injuries in right leg knee and right eye, besides receiving multiple injuries in all over the

body. Stating so, he filed a claim petition claiming a compensation of Rs.5,00,000/-. The Tribunal, on evaluation of the oral and documentary evidence adduced by the parties, awarded a total compensation of Rs.1,48,000/- with interest at 9%pa from the date of petition. Aggrieved over the same, the appellant insurance company has preferred this appeal.

3.The learned counsel for the appellant submitted that the Tribunal erred in passing an award against the appellant insurance company, since the claimant himself was a tort-feaser. He further submitted that considering the nature of injuries and the period of treatment taken by the claimant, the compensation awarded by the Tribunal is on the higher side and hence, the same needs substantial reduction.

4.Per contra the learned counsel for the first respondent / claimant submitted that based on the evidence and documents produced by the claimant, the Tribunal has rightly rendered its findings on negligence and fastened the liability on the appellant insurance company and ultimately, awarded the just compensation and hence, the same do not require any interference at the hands of this Court.

5.Heard the learned counsel for the appellant as well as the learned counsel for the first respondent / claimant and perused the materials available on record.

6.As far as the negligence aspect is concerned, the Tribunal basing reliance on the evidence of P.W.1/claimant coupled with the documents viz., Exs.P1-FIR, P3-Rough sketch, P4-charge sheet, P5-Motor vehicle Inspector's report and P6-criminal court judgment, has come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Tempo van and accordingly, fastened the liability on the appellant insurance company to pay compensation to the first respondent/claimant. This Court is of the opinion that the findings so rendered by the Tribunal are based on the materials and evidence adduced by the first respondent/claimant and hence, the same warrants no interference.

7.As regards the quantum of compensation, the Tribunal has fixed the monthly income at Rs.3,000/- and adopted the multiplier of 15 and taken 20% permanent disability as certified by PW.2/Doctor and ultimately, quantified the compensation under the head "loss of income" at Rs.1,08,000/-. Further, the Tribunal has awarded Rs.5000/-, Rs.5000/-, Rs.10,000/- and Rs.20,000/- towards "Transportation and Extra nourishment", "medical expenses", "loss of income during treatment period" and "pain and suffering" respectively. This Court is of the view that the quantum so determined by the Tribunal are based on the weightage of evidence and the settled principle of law and

hence, the same need not be interfered.

8.However, the rate of interest at 9%pa awarded by the Tribunal is slightly on the higher side, since the accident had occurred on 21.07.2001 and hence, the same is hereby reduced to 7.5% per annum.

9.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant / Insurance Company is directed to deposit the entire award amount as ordered by the Tribunal along with interest at 7.5% per annum from the date of petition 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. On such deposit being made, the Tribunal is directed to transfer the same to the Savings Bank Account of the first respondent/claimant through RTGS, within one week thereafter.

Sd/-

Assistant Registrar (CO MDU)

//True Copy//

Sub Assistant Registrar

srk/rna /rk

To

1.The Motor Accidents Claims Tribunal,
Additional District Court,
Fast Track Court No.3, Namakkal.

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

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C.M.A.No.3675 of 2004

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