

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

C.M.A.No.1939 of 2006

and

M.P.No.1 of 2006

National Insurance Co. Ltd.,
Branch Office, No.78, TVS Street,
Erode.

... Appellant/Respondent II

Vs.

1.Mathayan

...Respondent 1/Petitioner

2.P.Sekar

... Respondent 2/Respondent 1

[R2 remained ex parte before the Tribunal,
hence notice to R2 may be dispensed with]

Prayer : Civil Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.06.2005 in M.C.O.P.No.648 of 2002 on the file of the Motor Accident Claims Tribunal (Sub Judge), Krishnagiri.

For Appellant : M/s.N.B.Surekha

R2 : Ex parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant Insurance Company, assailing the judgment and decree dated 22.06.2005, passed by the 'Motor Accident Claims Tribunal (Sub-Court), Krishnagiri' (hereinafter referred to as 'the Tribunal'), in M.C.O.P.No.648 of 2002.

2.It is the case of the 1st respondent/claimant that, on 20.02.2002, he was travelling as a passenger in the share-auto-rickshaw, bearing Registration No.TN-29-E-6347, belonging to the 2nd respondent and insured with the appellant Insurance Company, in the Salem-Dharmapuri National Highway, from Dharmapuri Collectorate to Dharmapuri Town. At about 10.00a.m., when the vehicle was nearing Lakkiyampatti Bus stop, due to the rash and negligent driving of its driver, the auto-rickshaw dashed against a bullock-cart. Due to the said impact, the 1st

respondent and the other passengers in the auto-rickshaw sustained injuries. The first respondent was taken to the Government Headquarters Hospital, Dharmapuri, and was given treatment. Later, he filed a claim petition in M.C.O.P.No.648 of 2002, claiming a total compensation of Rs.1,00,000/- before the Tribunal, which awarded a sum of Rs.95,000/- (Rupees ninety five thousand only) in toto, with interest @ 9%per annum from the date of claim petition.

3.Challenging the quantum of compensation, the appellant Insurance Company has filed the present appeal.

4.Learned counsel appearing for the appellant Insurance Company has submitted that the claimant sustained only simple injuries and the Tribunal has erred in awarding huge amounts under various heads with 9% interest. However, he has not disputed the manner in which the accident had taken place.

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

6.Though the appeal was admitted on 11.07.2006, the appellant has not taken proper steps to serve papers on the first respondent/claimant. However, due to paucity of time, this appeal is taken up for final disposal on merits.

7.Since the learned counsel for the appellant Insurance Company has not disputed the manner in which the accident took place, the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the auto-rickshaw, need not be interfered with.

8.As regards the quantum of compensation, the first respondent/claimant examined himself as P.W.1, according to whom, he was doing business in grains, besides an agriculturist and was earning Rs.4,000/- per month; and he sustained grievous injuries in the accident. Dr.Ashok Kumar (P.W.2), in his evidence, has stated that, there was malunion of bone in the right arm of the 1st respondent and he suffers from permanent disability to the extent of 25% in respect of his right hand. The disability certificate (Ex.P6) to that effect and the x-ray film (Ex.P7) were also marked before the Tribunal.

9.The Tribunal, on considering those materials and evidence, has rightly awarded a sum of Rs.50,000/- towards injuries, Rs.1,000/- towards medical expenses, Rs.500/- for extra nourishment, Rs.500/- towards transportation

charges, Rs.3,000/- for partial loss of earnings, Rs.20,000/- towards pain and suffering, Rs.10,000/- for permanent disability and Rs.10,000/- towards loss of future earnings due to disability, which, in the opinion of this Court, are fair, just and reasonable and hence, the same need not be interfered.

10.However, insofar as the interest component is concerned, since, the accident had occurred in the year 2002, the rate of interest i.e., 9%, awarded by the Tribunal is on the higher side as it was not the prevailing rate at the relevant point of time and hence, this Court is inclined to bring down the same from 9% to 7.5%.

11.Accordingly, the Civil Miscellaneous Appeal is partly allowed and the appellant Insurance Company is directed to deposit the award amount, as ordered by the Tribunal, with interest @ 7.5% p.a. from the date of claim petition, upto the date of deposit of entire amount, 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 first respondent is permitted to withdraw the same on making proper application. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

mkn

To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal,
Krishnagiri.

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

+1cc to Mrs.N.B.Srekha, Advocate, S.R.No.64057

C.M.A.No.1939 of 2006
and M.P.No.1 of 2006

EV(CO)
CB(17/08/2020)