

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2427 of 2007
and M.P.No.1 of 2007

The New India Assurance Co.Ltd.
Divisional Office, working at
483-S.N.V.Chambers (3rd Floor),
Coimbatore-641 012,
Coimbatore District.

... Appellant/2nd Respondent

Vs

1.R.Rameshkumar @ Ramesh
2.P.Thangavel
...

Respondents/Petitioner & 1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 22.02.2007 made in MCOP No.101 of 2006 on the file of the Motor Accidents Claims Tribunal (Sub Judge) at Tarapuram.

For Appellant : Mr.C.Ramesh Babu

For Respondents: No appearance

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.80,000/- towards compensation to the first respondent for the injuries suffered in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 04.12.2005 at about 8.30 p.m., the first respondent was riding his motorcycle bearing Reg.No.TN-37-S-9120. One Kannan was travelling in the said motorcycle as pillion rider. They were proceeding towards West on the southern edge of the East-West Coimbatore to Avinashi Road. When they reached near Kalappatti Pirivu, an auto-rickshaw bearing Reg.No.TN-38-AD-3666, driven by its driver in a rash and negligent manner, came from North to South direction at high speed and dashed against the motorcycle which the first respondent was riding. Due to the said impact, both the rider

and the pillion rider of the motorcycle were thrown out and sustained grievous injuries. The first respondent filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.80,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal ought not to have held that the accident had occurred due to the rash and negligent driving of the driver of the auto-rickshaw. He also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.It is seen that the first respondent / claimant has not been served for want of correct address. The appellant Insurance Company has not taken steps, even at this length of time, to serve papers to the other side.

6.The Tribunal examined Ex.P5-copy of charge sheet and Ex.P6-copy of the judgment of the Judicial Magistrate and had given a finding that a criminal complaint has been filed against the second respondent herein and accepting the same, the second respondent has paid the fine. Observing so, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the auto-rickshaw. This Court is not inclined to interfere with the said factual finding rendered by the Tribunal.

7.With regard to the quantum of compensation, the Tribunal awarded a sum of Rs.3,000/- towards loss of income during the treatment period, after concluding that the injured would have earned a sum of Rs.1,500/- per month as Lab Technician in a private hospital at Coimbatore, even though no documents have been filed as regards the income of the injured. The Tribunal has also awarded a sum of Rs.5,000/- towards transport to hospital, Rs.3,000/- towards nourishment, Rs.25,000/- towards pain and suffering, Rs.14,000/- towards 14% permanent disability and Rs.30,000/- towards permanent loss of earning capacity. The amounts awarded by the Tribunal under the above heads are very reasonable and hence the same are confirmed.

7.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy

of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal
(Sub Judge), Tarapuram.

Copy to:

The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.C.Ramesh Babu, Advocate sr.48961

C.M.A.No.2427 of 2007
and M.P.No.1 of 2007

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nr 15/11/2019



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