

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2473 of 2007

and

M.P.No.2 of 2007

The Oriental Insurance Co. Ltd.,
Suba Govindam Building
Imperial Road, Cuddalore - 2 ...Appellant/2nd Respondent

Vs

1.Govindasamy ...1st Respondent/ Petitioner

2.Dharmalingam ...2nd Respondent/1st respondent
(Set exparte before Tribunal)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the Judgement and decree passed by the Motor Accident Claims Tribunal, (Principal Sub Court), Cuddalore in M.C.O.P.No.1779/2004 dated 27.10.2005.

For Appellant : Mr.M.Rajasekhar

For R1 : No Appearance

J U D G M E N T

This Appeal is preferred by the Insurance Company against the award of a sum of Rs.1,66,000/- towards compensation to the first respondent / claimant due to the injuries sustained by him in a motor vehicle accident.

2.The case, in brief, is as follows:

On 01.06.2004 at about 03:45 p.m, while the first respondent / injured was riding his cycle at Thirupapuliyur Road near Siematti an auto-rickshaw bearing Registration No. TN-51-Y-6517 belonging to the second respondent and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the first respondent. Due to the said impact, the first respondent

sustained multiple injuries. Hence, he filed a claim petition in M.C.O.P.No.1779 of 2004 before the Motor Accident Claims Tribunal, Cuddalore, Principal Sub Court, Cuddalore. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,66,000/- with interest at the rate of 7.5% per annum from the date of petition.

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

4.Despite service of notice and his name having been printed in the cause list, there is no appearance on behalf of the first respondent/claimant. However, considering the fact that the appeal is of the year 2007, this Court is inclined to dispose of this appeal, on merits.

5.The learned counsel for the appellant /Insurance Company has submitted that the Tribunal has erred in coming to the conclusion that the accident had occurred only 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.

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

7.Since there is no evidence to disbelieve the version of P.W.1; that the nexus of accident was proved by the evidence of P.W.1 and no rebuttal evidence was forth coming on the side of the appellant herein, 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 and accordingly directed the appellant Insurance Company to pay the compensation to the injured, which finding this Court is not inclined to interfere, since the same is based on records.

8.As regards the quantum of compensation awarded by the Tribunal, it is seen that the injured was treated as in-patient in the Government General Hospital, Cuddalore, from 22.02.2004 to 31.07.2004 and in this respect, Ex.P4. O.P. Bills were produced and based on that the Tribunal has awarded Rs.20,000/- towards medical expenses. Based on the disability certificate, Ex.P.8, the Tribunal has awarded Rs.80,000/- as compensation towards the head 'disability'. The claimant/ 1st respondent examined himself as P.W.1 and stated that he was working as a commission agent and earning a sum of Rs.7,500/- per month, hence the Tribunal decided to take the monthly income of the injured at Rs.7,500/- and awarded Rs.40,000/- towards loss of income. The Tribunal awarded Rs.5,000/- towards extra

nourishment, Rs.1,000/- towards Transportation charges and Rs.30,000/- towards pain and sufferings, totalling to Rs.1,76,000/-. Even though the total compensation works out to Rs.1,76,000/-, it has been stated as Rs.1,66,000/- in the judgment of the Tribunal, which is a clerical error. The compensation awarded by the Tribunal under the above heads are very reasonable and hence the same are confirmed.

9. In the result, the Civil Miscellaneous Appeal is disposed of rectifying the clerical error in the impugned judgment and accordingly, the appellant Insurance Company is liable to pay a total compensation of Rs.1,76,000/- with interest at the rate of 7.5% per annum from the date of petition. No costs. Consequently, the connected Miscellaneous Petition is closed. The appellant-Insurance Company is directed to deposit the compensation amount as ordered above along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent / claimant is permitted to withdraw the same, on making proper application.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

smn/srk /rk
To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Cuddalore

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

+1cc to Mr.M.Rajasekhar , Advocate SR.No. 64732

+1cc to Mr.J.Chandran , Advocate SR.No. 63302

C.M.A.No.2473 of 2007

A.SK(06/08/2020)