

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.2948 2007

AND

M.P.NO.2 OF 2007

The National Insurance Co. Ltd.,
165, Nethaji Road, Manjakuppam,
Cuddalore-1.

... Appellant/R2

Vs.

1.Damodharan
2.Ramadevan

... R1/Petitioner

... R2/R1

Prayer:

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 18.01.2006 made in MCOP No.1861 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Cuddalore.

For Appellant : Mr.S.Arunkumar

For R-2 : Mr.M.Murthy

J U D G M E N T

This appeal is preferred by the Insurance Company against the award of a sum of Rs.2,47,800/- towards compensation to the first respondent for the injuries he suffered in a motor vehicle accident.

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

On 15.08.2003 at about 3.30 p.m, when the first respondent/claimant was travelling in a Bajaj Minidor bearing Registration No.TN 31M 4956 on the Cuddalore - Palur Main Road near T.Rajapalayam, the vehicle got capsized, due to tyre burst. Due to the said impact, the first respondent/claimant sustained fracture and grievous injuries. Stating so, he filed a claim petition seeking compensation of Rs.5,00,000/-. On a consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.2,47,800/-

with interest at the rate of 7.5% per annum from the date of petition. Aggrieved over the same, the appellant insurance company has preferred this appeal.

3.The learned counsel for the Appellant/Insurance Company submitted that the Tribunal has failed to take note of the fact that the second respondent has violated the law by permitting more number persons to be travelled in the goods vehicle, than the permissible limit, at the time of accident and hence the appellant is not liable to pay any compensation. He further submitted that the Tribunal has also failed to take note of the fact that the appellant cannot be made liable to pay compensation without any additional premium being paid by the second respondent in that regard. It is also submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant and the same has to be reduced to some extent.

4.Heard the learned counsel for the appellant insurance company and the learned counsel for the second respondent/owner of the vehicle and perused the materials available on record.

5.Despite ordering notice, the appellant has not taken proper steps to serve notice on the first respondent/claimant, even at this length of time. However, due to paucity of time, the appeal is taken up for final disposal, on merits.

6.Since the learned counsel for the Insurance Company has not disputed the manner in which the accident had taken place, the finding of the Tribunal to that extent, is confirmed as such.

7.It was put forth on behalf of the Insurance Company that 14 persons travelled in the vehicle violating the policy conditions, the Tribunal deemed it fit to direct the Insurance Company to make payment to the claimant, since the contention of the Insurance Company in this regard, has not been proved. The Tribunal has correctly considered the materials and evidence and has correctly directed the Insurance Company to pay compensation to the claimant in the absence of necessary proof in this regard and hence, the same need not be interfered with by this Court.

8.Considering the evidence and materials adduced by the first respondent/claimant, the Tribunal has fixed the monthly income of the claimant at Rs.3,000/- and calculated the monthly loss of income for 35% permanent disability at Rs.1050/- (Rs.3000 x 35% = Rs.1050/-) and adopted the multiplier of 16 and determined the compensation under the head "loss of income" at Rs.2,26,800/-. The Tribunal has correctly determined the monthly income, adopted the multiplier and calculated the compensation under this head and hence, the same need not be interfered with

by this Court. Further, the Tribunal has awarded Rs.10,000/- towards pain and suffering, Rs.10,000/- towards extra nourishment and Rs.1,000/- towards transportation charges, which are just and reasonable and hence, the same are hereby confirmed.

9.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The connected miscellaneous petition is closed.

10.The Appellant/Insurance Company is directed to deposit the compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount 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/claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kv/srk

To

1. The Principal Subordinate Judge,
The Motor Accident Claims Tribunal,
Cuddalore.
2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.62450

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EV(CO)
CS/14/12/2020

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