IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.3183 of 2006
& M.P.No.1 of 2006

M/s. National Insurance Company Ltd.,
Kangeyam ... Appellant / 2nd Respondent

..vs..

1. P.Kandaswamy ...1st Respondent/Petitioner
2. E.Vellingiri ...2nd Respondents /1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 18.04.2006 made in M.C.O.P.No.574 of 1995 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.4, Coimbatore at Tiruppur.

For Appellant : Mrs. N.B.Surekha

For Respondents: Mr.S.S.Swaminathan, for R-1
No Appearance, for R-2.

J U D G M E N T

As against the claim made for a sum of Rs.6,00,000/-, the Claims Tribunal has awarded a sum of Rs.1,39,166/- to the claimant / first respondent herein payable by the appellant herein (second respondent before the Tribunal).

2. It was the case of the claimant (first respondent herein) before the Tribunal that on 04.11.1994 when he was travelling in a Van bearing Registration No.TCQ 2443, met with an accident, due to which, he sustained grievous injuries at left eye, bone back, left leg and left thigh. Contending that the accident had happened due to the rash and negligent driving of the driver of the Van, the claimant has preferred a claim petition claiming compensation of Rs.6,00,000/- before the Tribunal.

3. The Tribunal, after trial and based on the witnesses account and documents, has fastened the liability on the appellant / Insurer and Insured of the Van and arrived at the quantum of compensation at Rs.1,39,166/-. Aggrieved over the

findings on negligence and quantum, this Appeal is preferred by the Insurer of the Van.

4. Heard the learned counsel for both sides.

5. The learned counsel for the appellant / Insurance Company submitted that the Tribunal ought to have dismissed the claim petition for the simple reason that the claim is a false one; the Tribunal failed to appreciate Ex.P-1-FIR in a proper perspective, wherein it was clearly stated that one Duraiswamy had driven the vehicle, however the name of the driver has been subsequently changed at the later point of time and considering the said fact, the Tribunal ought to have exonerated the appellant / Insurance Company from paying the compensation.

6. The learned counsel for the appellant further submitted that the Tribunal, having found that the driver of the Van was at fault, ought to have ordered at least pay and recovery to the appellant. In support of the said contention, the learned counsel relied upon the decisions reported in (2008) 7 SCC 416 (New India Insurance Company v. Darshana Devi and Others), (2005) 12 SCC 243 (National Insurance Company Ltd. v. Bommithi Subbhayamma and others), (1999) 1 SCC 403 (Mallawwa (Smt) and Others v. Oriental Insurance Co. Ltd. and Others) and (2007) 9 SCC 486 (New India Assurance Co. Ltd., v. Vedwati and others). She further submitted that, in the absence of any document, the Tribunal erred in fixing the monthly income of the claimant as Rs.2,100/- and hence, the compensation awarded by the Tribunal under the head 'loss of income' has to be reduced substantially.

7. Per contra, the learned counsel for the claimant / first respondent herein submitted that the award passed by the Tribunal is in fact less and not more. He further submitted that the Tribunal has analysed each and every aspects into consideration and has rightly fastnened the liability on the appellant Insurance Company and has awarded the just compensation, which warrants no interference by this Court.

8. A perusal of the award of the Tribunal would go to show that it has considered Ex.P-1-FIR along with the evidence of P.W.1-claimant. The change in the name of the FIR has not been raised by the appellant herein before the Tribunal (where the opportunity of cross-examination or examination is available) and hence, raising such a contention before this Court is incorrect. Having missed such an aspect, it is not expected to contend at this later point of time that the name in the FIR has been changed. In such view of the matter, basing reliance on the materials available on record, the Tribunal has discussed the pleadings and contentions raised by the both sides. The Tribunal has also considered the evidence

of R.W.1, both examination and cross-examination, in detail, and has fastened the liability on the appellant herein.

9. Further, there is no quarrel over the proposition laid down in the decisions, referred to supra and relied upon by the learned counsel for the appellant, but in the reported cases, the claimants therein had travelled in the offending vehicles as unauthorized passengers and hence, the said decisions are not of any use to the learned counsel for the appellant herein. Except this, the learned counsel for the appellant has not raised any new grounds to differ with the views already taken by the Tribunal. As such, this Court is of the opinion that the Tribunal has considered each and every aspects and has rightly rendered its findings on negligence that the accident had occurred due to the rash and negligent driving of the driver of the Van and accordingly, fastened the liability on the appellant / Insurance Company to pay compensation, which do not require any interference.

10. As far as the quantum of compensation awarded by the Tribunal is concerned, in the absence of any documentary proof with regard to the monthly income of the claimant, the Tribunal has taken the monthly income of the claimant at Rs.2,100/-, adopted the multiplier of 17, taken the disability at 24%, based on Ex.P-5-Disability certificate and arrived at the compensation under the head 'disability' at Rs.1,02,816/-. Basing reliance on Ex.P-4-Medical Bills and Ex.P-5-Disability certificate coupled with the evidence of the Doctor-P.W.2 and Ex.P-6-X-Ray, the Tribunal has awarded the compensation under the heads, 'Transportation and 'extra nourishment', 'pain and sufferings', 'mental agony' and 'medical expenses' at Rs.250/-, Rs.1,000/-, Rs.5,000/- and Rs.30,100/-, respectively.

11. This Court is of the view that the Tribunal has made a genuine attempt of law to restore the dignity of being. Based on the materials and evidence adduced by the claimant, the Tribunal has quantified the compensation which is nothing but just and reasonable and the same cannot be treated as a bonanza at any stretch of imagination for the injuries sustained by the claimant. Hence, the same is hereby confirmed.

12. In the result, affirming the award of the Tribunal, this Civil Miscellaneous Appeal, filed by the Insurance Company / appellant herein is dismissed. No costs.

13. The appellant / Insurance Company shall deposit the entire 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 Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant / injured / first respondent herein, within one week thereafter, through RTGS. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

1.The Judge, Motor Accident Claims Tribunal,
Fast Track Court No.4,
Coimbatore at Tiruppur.

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

+1cc to Mr.S.S.Swaminathan, Advocate SR.77554
+1cc to M/s.N.B.Surekha, Advocate SR.77502

CMA No.3183 of 2006
& M.P.No.1 of 2006

SSD(CO)
CB(03/01/2020)