

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3427 of 2006
& M.P.No.1 of 2006

The National Insurance Co. Ltd.,
Nerunchi Road, First Floor,
Villupuram 605 602

.. Appellant/2nd Respondent

Vs.

1. Dr. M.Pasupathy ..1st Respondent/Petitioner
2. P.Anthonisamy
3. The Oriental Insurance Co. Ltd.,
No.11 EVN Road, Parimalam Complex,
II Floor, Erode - 11 .. Respondents 2 & 3/Respondents 1 & 3

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.02.2006 made in M.C.O.P.No.1 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.1, Erode.

For Appellant : M/s. N.B.Surekha.
For R1 : Mr. K.Govi Ganesan
For R3 : Mr. S.K.Krishnamurthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 13.02.2006 made in M.C.O.P.No.1 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.1, Erode.

2.The first respondent herein is the claimant in M.C.O.P.No.1 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.1, Erode. He filed the above said claim petition, claiming a sum of Rs.2,00,000/- as compensation for the damages caused to his car and for the injuries sustained by him, in an accident that took place on 30.07.2003.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident had occurred due to the rash and negligent driving by the driver of the lorry, the second respondent herein, and arrived at a compensation of

Rs.1,27,500/-. As against the findings on negligence and quantum, the appellant has come out with the present appeal.

4. The learned counsel appearing for the appellant-Insurance Company submitted that the Tribunal has failed to see that the first respondent / claimant, having accepted the amount of Rs.80,228/- from the third respondent, in full quit of his claim towards repairs, cannot be permitted to make another claim in respect of same damages, repaired by another repairer. She further submitted that the claimant cannot be permitted to claim repair charges for the second time, since he had already received payment in respect of the repairs carried out at the workshop at the first instance; the award of the Tribunal is excessive and against the evidence on record.

5. Per contra, the learned counsel appearing for the claimant / first respondent herein contended that the loss incurred to the claimant was due to the negligence of the second respondent's vehicle also, which was insured with the appellant herein-Insurance Company; the first respondent herein has received a sum of Rs.80,228/- from his insurer (the third respondent herein) for the damage to his car and the appellant is liable to pay the remaining amount; the insurers of the first respondent and second respondent are different; the third respondent has not subrogated the rights of the first respondent / Insurer.

6. The learned counsel appearing for the third respondent / Insurer of the claimant's vehicle submitted that, as directed, they had paid a sum of Rs.80,228/- to the first respondent herein; in any event, the award of the Tribunal is perfectly valid and it does not require any interference by this Court.

7. This Court has heard the learned counsel appearing for the appellant, the first respondent and the third respondent and perused entire materials on record.

8. From the materials on record, it is not in dispute that the first respondent herein has spent a sum of Rs.1,94,218/- for repairing the damages caused to his car in the accident. It is also not in dispute that the third respondent herein (Insurance Company/Insurer of the first respondent/claimant) has paid a sum of Rs.80,228/- to the first respondent / claimant.

9. A perusal of the award of the Tribunal would go to show that the Tribunal, by placing reliance on Exs.P-1 to P-41 and Exs.R-1 to R-6, coupled with the evidence of P.Ws.1 to 4 and R.Ws.1 to 3, has come to the conclusion that the appellant herein is liable to pay a sum of Rs.1,27,500/-, along with interest at the rate of 7.5% per annum towards compensation.

10. Though evidence and documents have been let in by both sides, the appellant as well as the second respondent herein have not let in any contra evidence to disprove that the first respondent herein has spent a total sum of Rs.1,94,218/- towards repair to the car.

11. Considering the facts and circumstances of the case and the damages caused to the car, which was assessed by the Assessor, it would be reduce the compensation to Rs.41,000/-, from Rs.91,000/-, as quantified by the Claims Tribunal towards car damages, since there is a flaw by both parties.

12. The first respondent herein has filed a case before the Sub Court, Erode, on 24.03.2004 claiming compensation for the balance amount towards car damages and for his injury, but in Form P-II submitted before the Insurance Ombudsman, Chennai, he confirmed that for the same subject matter, no proceeding before any court / Consumer Court / Arbitrator are pending, which statement is totally misleading and false. However, in the claim petition, the first respondent herein has admitted that he received a sum of Rs.80,228/- from the third respondent herein and for the balance amount only, he has filed the claim petition. Also, the appellant herein has not let in any contra evidence to disprove that the first respondent herein has spent a total sum of Rs.1,94,218/- towards repair to the car. Further, for the injuries sustained by the claimant, a sum of Rs.36,500/- has been awarded by the Tribunal, based on evidence and documents account, which in the considered view of this Court, is perfectly valid and justified. In view of the above materials, the first respondent / claimant is entitled to a sum of Rs.77,500/- (Rs.41,000/- + Rs.36,500/-) instead of Rs.1,27,500/- as awarded by the Tribunal to be paid by the appellant herein / Insurance Company.

13. In the result, the Civil Miscellaneous Appeal is partly-allowed. The appellant-Insurance Company is directed to deposit the modified compensation of Rs.77,500/- along with interest at the rate of 7.5% per annum from the date of petition within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent is permitted to withdraw the same on making proper application before the Tribunal. No costs. Consequently, the connected MP is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.1, Erode

Copy to
The Section Officer,
VR Section, High Court, Madras.

+1 CC to Mr.K. Govi Ganesan, advocate sr 67274

+1 Cc to Mr.N.B. Surekha, Advocate sr 67297.

C.M.A.No.3427 of 2006
& M.P.No.1 of 2006

MP (CO)
SP(12/08/2020)



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