



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.06.2019
CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3471 of 2006
& M.P.No.1 of 2006

Branch Manager,
Branch Office, Chola mandalam Ms.General
Insurance Co.Ltd., 2nd Floor, Alankar Building,
D.B.Road, R.S.Puram, Coimbatore. Appellant/Respondent

N.Sakthivel
Vs.
..... Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.265 of 2005, dated 13.04.2006, on the file of the Motor Accidents Claims Tribunal, Additional Special Court, Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan

J U D G M E N T

This appeal is directed against the judgement and decree made in MCOP No.265 of 2005, dated 13.04.2006 on the file of the Motor Accidents claims Tribunal, Additional Special Court, Krishnagiri.

2. On 09.12.2004, the respondent herein was riding in his motor cycle and while proceeding in a curve, he fell down and sustained grievous injuries. Stating so, the respondent has filed a claim petition, claiming a sum of Rs.1,00,000/- as compensation against the appellant herein.

3. On the side of the respondent/claimant, PWs.1 and 2 were examined and Exs.P-1 and P-6 were marked. On the side of the appellant herein, no one was examined and no document was marked. On consideration of the same, the Tribunal awarded a sum of Rs.44,000/- as compensation to the respondent/claimant.

4. Heard the learned counsel for the appellant and perused the records.



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5. The learned counsel appearing for the appellant/insurance company submitted that the Tribunal erred in awarding the high sum as compensation, over looking the fact that the respondent himself was the owner of the vehicle / insured.

6. The factum of accident was not disputed by the appellant herein. Further Ex.P3, the policy, states that the vehicle was insured and was in force at the time of accident. Exs.P-2 and P-5 would establish the fact that the claimant has sustained the following injuries:

- 1.Swelling Rt.Shoulder 15 x 10 cm.
2. Contusion over Rt.Collar bone 10 x 10 cm.
3. Multiple injuries all over the body.
4. Fracture on Rt. Clavicle.

7. To controvert the above, no documents have been filed on the side of the appellant herein before the Tribunal. Nothing prevented the appellant herein to produce the documents on their side to prove their case, but the appellant herein has not done so. When the best evidence and the documents in their favour were not examined / filed, the appellant herein cannot take advantage of the claimant's case and proceed as against him.

8. In the absence of any documentary proof, based on the materials available on record, the Tribunal has rendered the finding as against appellant herein and awarded the compensation of Rs.44,000/-. The compensation awarded under each and every heads by the Tribunal are reasonable, weight of evidence and based on settled principles. Hence, the findings so rendered by the Tribunal on negligence as well as quantum, are hereby confirmed as such.

9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant / Insurance Company shall deposit the entire compensation amount, along with interests 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 / respondent herein, forthwith, through RTGS. Consequently, the connected MP is closed.

-s/d-

Assistant Registrar(Co)

True Copy

Sub-Assistant Registrar

kv / srk



To

1. The Additional Special Judge,
Motor Accidents Claims Tribunal,
Additional Special Court,
Krishnagiri.

Copy to

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

+1 cc to Mr.N.Vijayaraghavan Advocate sr54646

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aa31/10/2019