



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.457 of 2007
& M.P.No.1 of 2007

National Insurance Company Ltd.,
Dharmapuri Town and Taluk,
Dharmapuri District
Branch Office,
11 Ramakrishna Road, Salem - 7

... Appellant/Respondent-II

..Vs..

1. G.Karthikeyan
2. P.Sangeetha

...Respondent/Petitioner
... Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 29.11.2005, made in MCOP No.1059 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.1, Salem.

For Appellant : Mr. N.B.Sureeka

For Respondents : Mr. C.K.M.Appaji, for R-1.

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance company, challenging the liability and the quantum of compensation.

Brief facts:-

2. On 13.06.2001, the injured / claimant / first respondent herein was travelling as a pillion rider in TVS Suzuki bearing Registration No.TAM1626 which was driven by one K.Govarthan. The said TVS was driven in a careful manner and at that time, a toyoto car bearing Registration No.TN29-E-2720 came from the same direction, behind the injured / claimant, which was driven



by its driver in a rash and negligent manner and hit the injured, in which he sustained grievous fractures on his right ankle, right leg and abrasion over the right and left hands and multiple injuries all over the body. Claiming a sum of Rs.1,50,000/- he filed a petition of compensation.

3. The finding of the Tribunal was that the accident took place on account of the rash and negligent driving on the part of the driver of the toyoto car bearing Registration No.TN29-E-2720 and compensation of Rs.95,800/- has been awarded. But the Insurance company has not been given the right of recovery from the owner of the vehicle.

4. The compensation awarded and the break up details are as under:-

For Medical Expenses	-	Rs.21,800/-
Loss of earning during treatment period	-	Rs.10,000/-
Loss of future earnings on account of permanent disability	-	Rs.64,000/-

		Rs.95,800/-

5. A perusal of the award of the Tribunal would go to show that the claimant has suffered fracture on right ankle, right leg, abrasion over the right and left hands and multiple injuries all over the body. The strength of the bone has been found to be reduced on account of loss of flesh. Considering the nature of injuries, the amount of compensation awarded cannot be said to be excessive. In fact, it can be said that the award is inadequate.

6. The contention of the learned counsel for the appellant / Insurance Company is that the Tribunal should have ordered pay and recovery and that the Insurance Company should have been totally exonerated from the liability.

7. From the perusal of the claim form and Returned Cover (Exs.R-2 and R-3) it is evident that there was collusion between the owner and the claimant in getting the compensation from the appellant herein. Also, the entire reading of award of the Tribunal discloses that there is no discussion or finding with regard to the driving licence of the owner of the vehicle and such a document has also not been marked before the Tribunal. In the absence of driving licence, the Tribunal ought to have



drawn adverse inference against the owner of the vehicle and ought to have ordered pay and recovery in favour of the Insurance Company.

8. Under such circumstances, this Court is of the view that the Tribunal should have ordered pay and recovery and the Insurance Company should have been exonerated from the liability, as there was no driving licence on the driver of the offending vehicle / car. Therefore, the liability is only on the part of the second respondent, who is the owner of the Car, involved in the accident.

9. In the result, upholding the award passed by the Claims Tribunal, in addition to pay and recovery issue, the Civil Miscellaneous Appeal filed by the Insurance Company, is partly-allowed. The appellant herein is directed to deposit the compensation of Rs.95,800/- along with interests and costs (at first), within a period of four weeks from the date of receipt of a copy of this judgment and recover it from the owner of the vehicle / second respondent herein. On such deposit being made by the Insurance Company, the Tribunal shall transfer the said amount to the Savings Bank Account of the claimant / first respondent herein through RTGS, within one week thereafter. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

srk

To

1.Motor Accident Claims Tribunal,
Additional District Court,
Fast Track Court No.1, Salem.

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

+1cc to Mrs.N.B.Surekha, Advocate SR.51384

C.M.A.No.457 of 2007
& MP No.1 of 2007

LN(CO)
CB(08/01/2020)