

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2799 of 2008

and

C.M.P.No.1532 of 2008

National Insurance Co. Ltd.,
Regional Office,
Guindy,
Chennai.

...Appellant/2nd Respondent
in Tribunal

Vs

1.Syed Batsha

2.G.Parameswari

...Respondents/
Petitioner and first Respondent
in Tribunal below

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and decree dated 12.04.2005 passed in M.C.O.P.No.438 of 2003, on the file of Motor Accident Claims Tribunal, Sub-Court, Krishnagiri.

For Appellant : Mr.S.Vadivel
For R2 : No Appearance

J U D G M E N T
सत्यमेव जयते

This appeal is preferred by the Insurance Company against the award of a sum of Rs.2,50,000/- towards compensation to the first respondent / claimant due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 20.11.2002, at about 6.00 p.m., the first respondent / injured was travelling in the Tempo Van bearing Registration No.TN-30-B-1105 belonging to the second respondent and insured with appellant/Insurance Company, for transporting fruits from Salem to Tirupathur. The said van, while proceeding on the Salem to Harur Highways Road and nearing

Gopinathampatti Branch Road, due to the rash and negligent driving of its driver, it dashed against a cyclist and hit against the side wall of a bridge and finally got capsized. Due to the said impact, the first respondent sustained grievous injuries. The first respondent filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,50,000/- with interest at the rate of 9% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in coming to the conclusion that the Tempo Van driver had caused the accident, in the absence of any substantial proof to that effect. He further submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

6.Though this appeal was admitted way back in the year 2008, the appellant Insurance Company has not taken steps to serve papers to the other side even at this length of time. However, considering the fact that the appeal is of the year 2008, this Court is inclined to proceed with this appeal on merits.

7.The first respondent was examined as P.W.1. He deposed before the Tribunal that on the date of accident he travelled along with his fruits in the tempo van in question and that the accident had occurred only due to the rash and negligent driving of the driver of the Tempo van. The appellant has not let in any evidence to disprove the contention of the first respondent. Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the negligent driving of the van driver. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal and the same is hereby .

8.Ex.P2 is the Wound Certificate. P.W.3 is the Doctor. Ex.P13 is the Disability Certificate given by P.W.3. Taking note of Ex.P2, Ex.P13 and also the deposition of P.W.3, the Tribunal has awarded a sum of Rs.40,500/- towards injuries, Rs.4,500/- towards partial loss of income, Rs.15,000/- towards medical expenses, Rs.10,000/- towards transportation, Rs.5,000/- towards extra nourishment, Rs.70,000/- towards pain and suffering, Rs.45,000/- towards 20% permanent disability fixed by the Doctor as per Ex.P13-Disability Certificate and Rs.60,000/-

towards loss of future earning capacity. The amounts awarded by the Tribunal under the above heads are very reasonable and hence the same are confirmed.

9. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, the connected miscellaneous petition is closed. No cross. The appellant-Insurance Company is directed to deposit the entire compensation amount, with interest and costs, 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.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

gbi / srk
To

1. The Sub-Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

copy to

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

+1 cc to Mr. S. Vadivel Advocate sr60786

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