

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.07.2019
CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3024 of 2008

National Insurance Company Ltd.,
Cuddalore.

.... Appellant

Vs.

1.Minor P.Gopi rep. by his mother
Rajeswari

2.A.Murugan

.... Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 28.02.2006 made in MCOP No.364 of 2005 on the file of the Additional District Court (Fast Track Court No.2) Cuddalore.

For Appellant : Mr.S.Vadivel

For R-1 : No Appearance

J U D G M E N T

The case in brief, is as follows:

On 21.05.2003 at about 3.00 p.m., the first respondent was riding a bicycle in the Panapakkam Road. At that time, the van bearing Reg.No.TN-31-D-8903 belonging to the second respondent and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the bicycle. Due to the said impact, the first respondent was thrown out and sustained grievous injuries and multiple fractures all over the body. The first respondent filed a claim petition claiming a sum of Rs.5,00,000/- as compensation, before the Tribunal. On consideration of the materials and evidence adduced on record, the Tribunal awarded a total compensation of Rs.1,88,400/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant insurance company has come up with this appeal.

2.The learned counsel for the Appellant/Insurance Company submitted that the Tribunal has failed to see that the injuries alleged to have been suffered by the claimant is not schedule injuries and there was no evidence before the claims Tribunal to the effect that the claimant has suffered loss of earning capacity, in view of the injuries. He further submitted that the

amounts awarded under each and every heads are exorbitant and hence the same needs significant reduction.

3. Heard the learned counsel for the appellant and perused the materials available on record. Despite the service of notice, there is no representation on behalf of the first respondent/claimant.

4. A perusal of the award passed by the Tribunal would establish the following facts:

"1. The evidence of PW.1 (one of the injured in the same accident) and PW.2-mother of the injured herein, were in similar lines.

2. When PWs.1 and 2 were examined, it was not established that the accident had not occurred due to the rash and negligent driving of the Van driver.

3. As per the report of the Motor Vehicle Inspector also, it was not established that the accident had not happened due to any fault on the part of the driver of the Van.

4. All the cumulative circumstances only show that due to the negligent driving of the Van driver only, the accident had happened."

In the circumstances, the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the van, is confirmed.

5. As far as the quantum awarded by the Claims Tribunal is concerned, since the first respondent herein is a Minor and a student, aged 15, the Tribunal based on the settled position of law, has taken the monthly income at Rs.1,200/-, adopted the multiplier of 11 and ultimately assessed the loss of income at Rs.1,58,400/-. Sums of Rs.20,000/- and Rs.10,000/- were also awarded towards permanent disability and pain & suffering. The said sums awarded, in the considered view of this Court, are just and reasonable and hence, the same need not be interfered.

6.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. 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. The minor claimant would have attained majority by now. Hence, 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 (CS-V)

True Copy

Sub-Assistant Registrar

kv / srk

To

1.The Additional District Judge (Fast Track Court No.2) Cuddalore.

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

+1 cc to Mr.S.Vadivel Advocate sr55803

C.M.A.No.3024 of 2008

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