

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.845 of 2005

National Insurance Company Ltd,
Divisional Office - 1, Second Floor,
L.R.N. Complex, Saradha College Road,
Salem Branch Office-II
Salem - 636 007.Appellant/2nd Respondent

Vs

1.S.Gopal
2.S.ThangavelRespondents/Claimant
and 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and decree dated 01.07.2004 passed in M.A.C.T.O.P.No.457 of 2001, on the file of Motor Accidents Claims Tribunal, Additional District and Special Judge for E.C Act cases, Salem.

For Appellant : Mrs.N.B.Surekha
For R1 & R2 : No Appearance

J U D G M E N T

Challenging the finding of the Tribunal on negligence, the appellant insurance company has preferred this appeal.

2.The case in brief, is as follows:

On the fateful day, ie. on 15.01.2001, at about 1.30 a.m., the first respondent / claimant along with his friends, was travelling in a Car bearing Registration No.TMP.7444. When the Car was proceeding on Salem to Dharmapuri Main Road, a lorry bearing registration No.KA-01-A3299 came from the opposite direction in a rash and negligent manner and dashed against the Car. Due to the said impact, the first respondent/claimant sustained grievous injuries. Stating that the accident had occurred due to the rash and negligent driving of the driver of the lorry, he filed a claim petition claiming a compensation of Rs.1,00,000/-. On consideration of the materials and evidence

available on record, the Tribunal awarded a total compensation of Rs.10,000/- with interest at the rate of 9% per annum from the date of petition. Challenging the same, the appellant / Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant has not disputed the quantum of compensation awarded by the Tribunal. According to her, the driver of the Car was also equally responsible for the accident, whereas, the Tribunal has erred in coming to the conclusion that the lorry driver had caused the accident. She further submitted that the Tribunal failed to consider the evidence of R.W.1 and rejected the documents marked through him as Exs.B1 to B3 and the Tribunal failed to see that the driving licence of the driver of the Car was expired on 09.12.2000. Hence, she prayed to set aside the judgment of the Tribunal.

4.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously. Despite the service of notice and the name of the respondents having been printed in the cause list, there is no representation on their behalf. However, considering the fact that the appeal is of the year 2005, this Court is inclined to take up this appeal on merits.

5.From the materials available on record, it is seen that the first respondent/claimant examined himself as P.W.1. He has deposed in his evidence that the accident occurred only due to rash and negligent driving on the part of the driver of the lorry, who, in the course of overtaking the vehicle, dashed against the Car, in which, the first respondent was travelling. To substantiate the same, Ex.A1 / F.I.R was marked, which was registered against the driver of the lorry for causing the accident.

6.Though the appellant insurance company, placing reliance on Exs.B1 to B3 -motor vehicle Inspector's report, contended that the driver of the car was also equally responsible for the accident, the Tribunal has rejected the said contention and arrived at the conclusion that the accident had happened due to the rash and negligent act on the part of the driver of the lorry and accordingly, fastened the liability on the appellant insurance company and awarded a just compensation of Rs.10,000/- with interest at 9%pa from the date of claim petition, which, in the opinion of this Court, are based on the materials and evidence available on record and hence, the same need not be interfered.

7. In fine, this Civil Miscellaneous Appeal stands dismissed. No costs. 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 Tribunal shall transfer the amount lying in the deposit to the bank account of the first respondent / claimant through RTGS within a period of one week thereafter.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Additional District and Special Judge,
Motor Accidents Claims Tribunal,
Salem.

Copy to : The Section Officer,
V.R. Section, High Court, Madras.

+1 cc to M/s.N.B.Surekha, Advocate Sr.No. 64809

AKM/08.01.2020/3P-4C /

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