IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3245 of 2008
and
M.P.No.1 of 2008

The National Insurance Company Ltd.,
No.751, Anna Salai,
Chennai - 600 002. .. Appellant/2nd Respondent

Vs.

1.M.Kanniammal
2.N.Parthasarathy .. Respondents/Petitioner & Ist Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.04.2008 made in M.C.O.P.No.467 of 2004 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.S.Vadivel

For R1 : Mr.V.Mohan Choudary

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 28.04.2008 passed by the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai, in M.C.O.P.No.467 of 2004.

2.The first respondent herein filed a claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by her in an accident that took place on 12.12.2003. According to her, while she was proceeding in a TVS50 Scooty bearing Regn.No.TN01 Q 0461 as pillion rider, in Nelson Manickam Road, a Share auto bearing Regn.No.TN09-T 7627 belonging to the second respondent and insured with the appellant insurance company came in a rash and negligent manner and hit the Scooty from behind and thereby caused the accident, in which, she sustained grievous injuries.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving of the driver of the share auto belonging to the second respondent and accordingly, directed the appellant-Insurance Company to pay a sum of Rs.74,202/- with interest at 12%pa from the date of petition, as compensation to the first respondent at the first instance and then, recover the same from the second respondent. Aggrieved over the same, the appellant insurance company has preferred this appeal.

4.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal ought not to have fastened the liability on the appellant herein, when the appellant through the evidence of R.W.1 and Ex.R2 has proved that the share auto bearing Registration No.TN.09.T.7627 was not involved in the accident. The learned counsel also submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant.

5.On the other hand, the learned counsel for the first respondent/claimant made his submission supporting the award passed by the Tribunal.

6.Heard the learned counsel for the appellant as well as the learned counsel for the first respondent and perused all the materials availabe on record.

7.P.W.1/first respondent/claimant has deposed in her evidence that while she was going as a pillion rider in the two wheeler, the driver of the Share auto drove the vehicle rashly and negligently and hit the two wheeler from behind and thereby caused the accident. Ex.P1 First Information Report was registered against the driver of the Share auto. Though it was contended on the side of the appellant insurance company, as per Ex.R2 Accident Register, the share auto involved in the accident was bearing Regn.No.TN09 AB 8453, the same was rejected by the Tribunal, stating that in Ex.R2, share auto Registration number has been inserted with some ulterior motive to defeat the claim of the claimant; and in the course of investigation, the police found that the auto mentioned in the FIR and the claim petition was one and the same and hence, charge sheet was filed against the driver of the share auto bearing Regn.No.TN09 T 7627. Thus, the Tribunal has rightly come to the conclusion that the driver of the share auto bearing Regn.No.TN09 T 7627 was responsible for the accident, which finding this Court is not inclined to interfere.

8.With regard to liability, the Tribunal has observed that the driver of the share auto did not possess valid driving licence at the time of the accident and hence, the appellant insurance company was liable to pay compensation, with a right to recover the same from the owner of the vehicle. This Court finds no error in the finding so rendered by the Tribunal and hence, the same is hereby confirmed.

9.As far as the quantum of compensation is concerned, P.W.1/first respondent/claimant has deposed that she was working as a typist and was earning Rs.3,000/- per month. Though she produced Ex.P7 certificate qualifying in typing, no document was produced with regard to her income. As per Ex.P4 discharge summary, she sustained one grievous injury. P.W.2/Doctor has certified that the 1st respondent suffered 25% disability. However, the Tribunal has taken her permanent disablement only at 20%. Ex.P9 is the disability certificate. As per Ex.P6 medical bill, the claimant spent Rs.4,202/- towards medical expenses. Placing reliance on the oral and documentary evidence adduced by the first respondent/claimant, the Tribunal has awarded Rs.12,000/- towards loss of income for 4 months, Rs.2,000/- towards transport, Rs.2,000/- towards extra nourishment, Rs.1,000/- towards damage to clothes, Rs.4,202/- towards medical expenses, Rs.1,000/- towards other expenses, Rs.20,000/- for permanent disability at 20%, Rs.12,000/- towards pain and suffering and Rs.10,000/- each towards loss of amenities and loss of expectation of life and in totalling a sum of Rs.74,202/-, which, this Court is of the opinion, are just and reasonable and hence, the same warrant no interference. There is no modification with regard to rate of interest at 12% pa, as the same is based on the decision of the Supreme Court in AIR 2007 SCW 7352.

10.In the result, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed as such. No costs. Consequently, the connected Miscellaneous Petition is closed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent is permitted to withdraw the same, after adjusting the amount already withdrawn, if any, by making proper application before the Tribunal. It is needless to state that the appellant insurance company can recover the compensation amount paid to the first respondent/claimant from the owner of the vehicle in accordance with law.

Sd/-
Asst.Registrar (Arbitration)

/true copy/

Sub Asst. Registrar

gbi/rk
To
1.The III Judge of Small auses
The Motor Accident Claims Tribunal,
III Court of Small Causes,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to Mr.S.Vadivel Advocate sr52572
+2 ccs to Mr.V.Mohan Choudary Advocate sr52558

C.M.A.No.3245 of 2008
and
M.P.No.1 of 2008

br(co)
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