

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1509 of 2009
and M.P.No.1 of 2009

National Insurance Co. Ltd.,
No.378, Mint Street,
Chennai ... Appellant/2nd respondent
Vs

1.Dhandapani
2.Jayakumar ...Respondents/ Petitioner &1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 05.07.2007 made in M.C.O.P.No.493 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Villupuram.

For Appellant : Mr.M.Krishnamoorthy
For R1 : No Appearance
For R2 : given up

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.1,02,900/- 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 20.07.2003, at about 06.00 hours, the first respondent / claimant was riding his bicycle on the left side of the Ulundurpet - Villupuram Main Road near Kedilam. At that time, the tanker lorry bearing Reg.No.TN-02-M-2153 belonging to the second respondent and insured with the appellant Insurance Company, came from the back side in a rash and negligent manner and hit the bicycle and due to the said impact, the first respondent was thrown out and 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.1,02,900/- with interest at the rate of 7.5% per annum from the date of petition. Since there was

violation of policy conditions on the part of the owner of the tanker lorry, the Tribunal directed the appellant Insurance Company to pay the compensation and thereafter recover the same from the owner of the vehicle.

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 ought to have completely exonerated the Insurance Company since the driver of the tanker lorry was not possessing the valid driving licence at the relevant point of time. It is also submitted that the compensation awarded by the Tribunal is excessive.

5.Despite the service of notice and the name of the first respondent/claimant having been printed in the cause list, there is no representation on his behalf.

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

7.After considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the tanker lorry, which is not in dispute. With regard to non-possession of valid driving licence, the Tribunal examined R.W.1-Junior Assistant of Regional Transport Office, who deposed before the Tribunal that the licence for the driver-Ekambaram in respect of driving the vehicle with hazardous items, already got expired on 04.02.2003 and since the accident had occurred only on 20.07.2003, it is very clear that on the date of accident, the driver was not in possession of valid driving licence. Considering the materials and evidence, the Tribunal accepted the contention put forth on the side of the Insurance Company that the owner of the tanker lorry had violated the policy conditions by allowing a person to drive the lorry without valid driving licence and accordingly ordered for pay and recovery, which in the considered view of this Court, is perfectly justified.

8.With regard to quantum, it was put forth on behalf of the claimant before the Tribunal that the claimant was doing agriculture and earning a sum of Rs.5,000/- per month. The Tribunal fixed the monthly income of the claimant at Rs.2,250/-, adopted the multiplier of 15 and arrived at the sum of Rs.72,900/- towards loss of income for 18% disability. Apart from this, the Tribunal has

awarded a sum of Rs.20,000/- towards pain and suffering and Rs.10,000/- towards transportation, medical expenses, damage to clothes / articles and extra nourishment. The amounts awarded towards these heads are just and very reasonable and hence the same are confirmed.

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

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

gbi
To

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Villupuram.

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

+lcc to Mr.M.Krishnamoorthy , Advocate SR.No. 72011
C.M.A.No.1509 of 2009
and M.P.No.1 of 2009

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