

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2836 of 2009
and M.P.No.1 of 2009

National Insurance Company Ltd.,
No.751, Anna Salai,
III Floor, Chennai 600 002. Appellant / R-2

Vs.

1.N.K.Venkat Rao,
No.22, Velayutha Achary Street,
Pudupet,
Chennai 600 002. R-1 / Petitioner

2.M.Prabhakar R-2 / R-1

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 22.04.2009 and made in M.A.C.T.O.P.No.3478 of 2005 on the file of the Motor Accident Claims Tribunal, Chennai (in the VI Court of Small Causes, Chennai).

For Appellant : Mr.S.Vadivel

For Respondent1 : No Appearance

For Respondent : Exparte before the Tribunal
below

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J U D G M E N T

This appeal is preferred by the appellant as against the award passed by the Tribunal in M.A.C.T.O.P.No.3478 of 2005 on 22.04.2009.

2.The case in brief is as follows:

On 11.07.2005 at about 8.15 a.m., when the 1st respondent herein/Claimant was pushing his Tri-cycle manually in road, a

motorcycle bearing Reg.No.TN-20-A-8010 belonging to the second respondent and insured with the appellant Insurance Company, came from behind in a rash and negligent manner and dashed against the 1st respondent. Due to the said accident the 1st respondent sustained grievous injuries. He filed a claim petition for a sum of Rs.1,63,000/- as total compensation. The Tribunal, based on the witnesses and documents available on record, has fastened the liability on the 2nd respondent and the appellant herein and arrived at the quantum of compensation at Rs.59,500/-. The Tribunal has also ordered the Insurance Company to pay the compensation to the claimant and thereafter to recover the same from the owner of the vehicle. Challenging the same, the insurer / appellant herein has preferred this appeal.

3.The learned counsel for the appellant / insurance company submitted that the rider of the motorcycle was not possessing the valid driving licence at the time of accident to driver the motorcycle and hence the Tribunal ought to have dismissed the claim petition as against the appellant. He further submitted that though the Tribunal has observed in its findings that pay and recovery should be ordered, the same has not been reflected in the decree. He further submitted in any event, an award passed by the Tribunal at Rs.59,500/- is on the higher side, which needs significant reduction. He also submitted that the interest awarded at the rate of 9.5% per annum, should be reduced to 7.5% per annum.

4.Heard the learned counsel for the appellant and perused the materials available on record. Despite the service of notice and the name of the first respondent having been printed in the cause list, there is no representation on his behalf.

5.Considering the materials and evidence, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the two-wheeler, which does not require any interference by this Court. The Tribunal has also accepted the contention put forth on behalf of the Insurance Company that the driver of the two-wheeler was not having the valid driving licence to drive the two-wheeler and accordingly ordered for pay and recovery.

6. In the award of the Tribunal, it has been observed as follows:-

"..... Hence it is concluded that as the Insurer of the 2nd respondent Insurance Company is liable to compensate the petitioner at the first instance and thereafter recover the same from the owner cum driver of the vehicle i.e, the first respondent herein."

7. Though the Tribunal has observed so, as stated supra, the same has not been reflected in the decree copy of the award. Since it is clear that the Tribunal has ordered pay and recovery, it is now concluded that the insurer/appellant herein is liable to compensate the 1st respondent at first and thereafter recover the same from the owner of the vehicle i.e., 2nd respondent herein.

8. Further, the Tribunal has taken note of Ex.P4 disability certificate, P5 X-ray and has awarded Rs.2,000/- towards medical expenses, Rs.4,000/- towards transportation and extra nourishment, Rs.35,000/- for disability and Rs.8,000/- towards pain and sufferings. Further, the Tribunal has awarded Rs.10,500/- towards loss of income for a period of three months, by fixing the monthly income of the injured at Rs.3,500/-. The Tribunal has rightly adopted the conventional methodologies, and awarded the above amounts and hence, the compensation awarded by the Tribunal does not require any interference.

9. As far as the interest portion is concerned, the Tribunal has awarded 9.5% interest per annum from the date of petition. At this juncture, the learned counsel for the appellant submitted that the appellant cannot be saddled with the high range of interest, since the award was passed during 2009 and the appeal is being disposed of only now.

10. The said contention has some force. Hence, the interest portion is alone reduced to 7.5% per annum from 9.5% from the date of claim petition till the date of deposit.

11. In the result, the Civil Miscellaneous Appeal filed by the appellant / Insurance Company is partly-allowed, by confirming the total amount of compensation at Rs.59,500/-, as awarded by the Claims Tribunal, which is payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant insurance company is directed to deposit the entire award amount along with interest and costs, less 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 being made, the Tribunal is directed to transfer the said sum to the Savings Bank Account of the claimant/ R-1, within one week thereafter, through RTGS. Thereafter, the insurance company shall proceed against the second respondent, owner of the vehicle, for recovery of the amount of compensation, in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

srk / rri

To

1.The Motor Accidents Claims Tribunal,
VI Court of Small Causes, Chennai.

Copy to:

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

+1cc to Mr.S.Vadivel , Advocate SR.No. 71241

C.M.A.No.2836 of 2009

A.SK(22/01/2020)



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