

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3160 of 2009
and
M.P.Nos.1 and 2 of 2009

The District Forest Officer,
Viluppuram Division,
Viluppuram.

...Appellant /1st Respondent

Vs

1.Pushparaj

2.Dhavapudhalvan ... Respondents/Petitioner, 2nd Respondents

Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and decree dated 30.04.2009 made in MACTOP No.235 of 2009 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.II at Tindivanam.

For Appellant : Mrs.Thangavadhana Balakrishnan
Additional Government Pleader

For Respondent-1 : Ms. T. Dharani

For Respondent-2 : No Appearance

JUDGMENT

This appeal has been preferred against the Judgment and decree dated 30.04.2009 made in MACT.OP.No.235 of 2009 on the file of the Motor Accident claims Tribunal, Fast Track Court No.II at Tindivanam.

2.The case in brief, is as follows:

On 19.05.2006 at about 5.00 p.m., the first respondent herein was riding his motorcycle bearing Registration No.PY01-Z-2925 on the Chidambaram Road at Thiruppapuliyur. When the

vehicle was nearing Mohini Bridge, the appellant's Car bearing Registration No.TN32.G.0384 came at a very high speed and dashed against the motorcycle. Due to the said impact, the first respondent herein was thrown out of the motorcycle and sustained fractures and grievous injuries on his right leg. Immediately he was taken to the Mahatma Gandhi Hospital for treatment and for further treatment, he was referred to Saikrubha, Puducherry. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal has awarded a sum of Rs.1,18,000/- with interest at the rate of 7.5% p.a., from the date of petition, as total compensation.

3.Challenging the same, the appellant has filed the present Civil Miscellaneous Appeal.

4.The learned Additional Government Pleader appearing for the appellant has submitted that the rider of the two wheeler, without adhering to the traffic rules, drove the vehicle and only because of the same, the accident took place. He further submitted that since the fault was on the part of the rider of the two wheeler, fixing the liability on the part of the driver of the Car is improper. It is also submitted that the compensation awarded by the Tribunal is excessive.

5.Per Contra, the learned counsel for the first respondent has submitted that the accident had taken place only due to the negligent driving on the part of the driver of the car. She further submitted that the award passed by the Tribunal is fair and reasonable and hence it does not require any interference.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.Before the Tribunal, the injured was examined as P.W.1 who has deposed that the driver of the car is the tortfeasor. R.W.1/driver of the appellant's vehicle has deposed in his evidence that the motorcyclist was talking with the pillion rider and dashed against the car and fell down and hence the accident itself was an invited one. On humanitarian grounds only, the driver of the car sent the injured to the hospital. The Tribunal has observed that even though the driver of the car stated that the negligence was on the part of the rider of the two wheeler, he has not produced any relevant proof to establish the same. It is also seen from records that no investigating officer has been examined or no investigation has been conducted or no report was filed in this connection. In these circumstances, the Tribunal fixed the liability on the

appellant, which finding this Court is not inclined to interfere.

8. With regard to the compensation awarded by the Tribunal, it has considered Exs.P3 to P5 and awarded Rs.30,000/- towards injuries and considering Exs.P6 to P9, the Tribunal has awarded Rs. 45,000/- towards treatment and other expenses. Taking note of Ex.P.13/Disability certificate, Rs.40,000/- was awarded towards pain and suffering and Rs.3,000/- was awarded towards Extra nourishment and the total compensation was calculated at Rs.1,18,000/-. The findings rendered on quantum by the Tribunal are based on settled principles of law, probabilities of case and weightage of evidence. Hence, this Court is of the view that interference on quantum is uncalled for.

9. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant 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 being made, the first respondent/claimant is permitted to withdraw the same on making proper application before the Tribunal. No cross. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

srk/smn /rk

To

1. The Motor Accidents Claims Tribunal
Fast Track Court No.II, Tindivanam.

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

+1cc to M/s.T.Dharani, Advocate SR.70027

+1cc to Spl Govt Pleader (Forest) SR.70909

C.M.A.No.3160 of 2009

and

M.P.Nos.1 and 2 of 2009

NMI (CO)

CB(09/03/2020)