

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3290 of 2009
and
M.P.No.1 of 2009

National Insurance Co., Ltd.,
Salem - 1. Appellant /2nd Respondent

Vs.

1. Saroja1st Respondent/Petitioner
2. Janarthanan
3. Babu Rao
4. Oriental Insurance Co., Ltd., Chennai.
(R2 and R3 exparte before the Tribunal.
Hence Notice may be dispensed with)

...Respondents 2 to 4/
Respondents 1,3 & 4

PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.07.2009 made in M.C.O.P.No.379 of 1997 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Athur.

For Appellant : Mr.N.Vijaya Raghavan

For R4 : M.Krishnamurthy

For R1 : No appearance

For RR2 & 3 : Ex Parte

J U D G M E N T

This appeal is preferred by the appellant/ insurer of the lorry, in which, the first respondent was travelling on the date of accident, against the judgment and decree dated 29.07.2009 passed by the Motor Accident Claims Tribunal, Subordinate Court, Athur, in M.C.O.P.No.379 of 1997.

2.By the impugned judgment, the Tribunal, after having held that the accident had occurred due to the rash and negligent driving of the drivers of both the tanker lorry and the lorry and accordingly fastened the liability on the insurers of both the vehicles at 50% each, awarded a total compensation of Rs.36,000/- to the first respondent/claimant for the injuries sustained by her in a motor vehicle accident, that took place on 15.09.1996.

3.The learned counsel for the appellant has disputed only on the finding of the Tribunal qua liability of the appellant insurance company to pay their share of compensation to the first respondent/claimant. He further submitted that this appellant already filed a petition in CRP.(NPD)No.3916 of 2009 as against the very same judgment dated 29.07.2009 passed in MCOP.No.85 of 1998, arising out of the same accident and this Court allowed the said revision petition vide order dated 22.08.2017, the relevant portion of which reads as follows:

"7. From the award of the Tribunal, it is clear that the Tribunal has held that the accident occurred only due to the rash and negligent driving by the driver of the tanker lorry belonging to the third respondent, insured with the fourth respondent. Having come to such a conclusion, the Tribunal ought not have directed the petitioner to pay 50% of the award amount to the first respondent. Thus, the Tribunal had committed irregularity and illegality in directing the petitioner to pay 50% of the compensation amount after holding that the accident occurred only to the rash and negligent driving by the driver of the tanker lorry. In view of the above circumstances, the order dated 29.07.2009 made in M.C.O.P.No.85 off 1998 is liable to be set aside in so far as directing the petitioner to pay 50% of compensation amount awarded. The respondents 3 and 4 are liable to pay the entire compensation amount awarded to the first respondent.

8. In the result, with above modifications, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed."

4.Since the issue involved herein has already been decided by this Court in the connected case in CRP (NPD) No.3916 of 2009 dated 22.08.2017 as extracted above, which has been agreed upon by the learned counsel for the fourth respondent insurance company, the present Civil Miscellaneous Appeal is also decided on the similar lines.

5. Accordingly, the appeal is allowed. Consequently, the judgment dated 29.07.2009 passed by the Tribunal in M.C.O.P.No.379 of 1997 is set aside, insofar as the direction issued to the appellant insurance company to pay 50% of compensation to the first respondent/claimant, is concerned. The respondents 3 and 4/owner and insurer of the tanker lorry are directed to deposit the entire compensation amount along with interest and costs as awarded by the Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. 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. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
The Subordinate Court, Athur.
2. The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.71579
+1c to Mr.M.Krishnamoorthy, Advocate Sr.71600

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srg 09/10/2019