

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.798 of 2019 and
C.M.P.No.2261 of 2019

The Manager,
Reliance General Ins. Co. Ltd.,
570, Naigum Cross Road,
next to Royal Industrial Estate,
Wadala (W), Mumbai - 400 031.

... Appellant/2nd Respondent

Vs.

1.Mr.Shanmugam 1st Respondent/Petitioner

2.Mr.Rajaram 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.03.2018 made in M.C.O.P.No.415 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankagiri.

For Appellant : Ms.C.Bhuvanasundari

J U D G M E N T

This Civil Miscellaneous Appeal is filed for against the award dated 23.03.2018 made in M.C.O.P.No.415 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankagiri.

2.The appellant is the second respondent in M.C.O.P.No.415 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankagiri. The first respondent filed the above said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.01.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging

to the second respondent and directed the appellant-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.8,50,000/- as compensation to the first respondent/claimant.

4. Against the said award dated 23.03.2018 made in M.C.O.P.No.415 of 2012, the appellant-Insurance Company has come out with the present appeal.

5. The learned counsel appearing for the appellant-Insurance Company contended that the accident did not occur due to rash and negligent driving by the driver of the lorry belonging to the second respondent. On the other hand, the first respondent is responsible for the accident as he did not give way to the lorry coming behind him forcing the lorry to over take him and in that process there was a collusion of both vehicles. The Tribunal erred in relying on the disability certificate issued by P.W.2/Doctor. The first respondent was not referred to medical board. In the absence of any functional disability, the Tribunal erred in adopting the multiplier method for awarding compensation and amounts awarded by the Tribunal under the heads of extra nourishment, pain and suffering, future medical expenses are excessive. The Tribunal having granted compensation towards pain and suffering, erred in awarding a sum of Rs.25,000/- towards simple injuries. In any event, the amounts awarded by the Tribunal are excessive and prayed for setting aside the award passed by the Tribunal.

6. I have heard the learned counsel appearing for the appellant and perused all the materials available on record.

7. From the materials available on record it is seen that the first respondent contended that driver of the lorry drove the same in a rash and negligent manner, came from behind suddenly to the left side to take U-turn and dashed against the two wheeler and caused accident. He deposed to that effect as P.W.1 and marked F.I.R. and other documents to prove the said contention. The Tribunal considering the above materials and the fact that the driver of the lorry pleaded guilty and paid fine, held that accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the second respondent. The appellant did not let in any contra evidence to disprove the said finding of the Tribunal. Therefore, I do not find any error in the finding of the Tribunal warranting interference by this Court.

8. As far as quantum of compensation is concerned, it is not in dispute that the first respondent is a weaver and due to his fracture in left knee and other injuries, he could not able to do the work as he was doing earlier. The first respondent examined P.W.2/Doctor, who deposed about nature of injuries,

treatment taken by the first respondent and disability suffered. The appellant has not examined any Doctor to prove that the percentage of disability certified by P.W.2/Doctor is excessive. The Tribunal considering the nature of work done by the first respondent and nature of injuries and disability, adopted multiplier method for awarding compensation by giving valid reason. Hence, the amounts awarded by the Tribunal is not excessive and there is no error in the said reasoning warranting interference by this Court.

9. In the result, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit a sum of Rs.8,50,000/- as compensation to the first respondent, 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 award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sankagiri.

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

+1cc to Ms.C.Bhuvanasundari, Advocate sr.9550

C.M.A.No.798 of 2019
and C.M.P.No.2261 of 2019

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