

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3340 of 2009 and M.P.No.1 of 2009
and
Cros.Obj.No.153 of 2010

C.M.A.No.3340 of 2009:

The National Insurance Co.Ltd.
Branch Office-I
Thanthai Periyar Market Complex
P.B.No.15, Salem-636 001. ... Appellant/Respondent III

Vs

1.Srinivasan ...Respondent I/Petitioner
2.Bhoopathy Rajan ...Respondent-II/Respondent I
3.A.J.Mohan ...Respondent III/Respondent II

Cros.Obj.No.153 of 2010:

A.J.Mohan ... Cross Objector/Respondent III

Vs

1.The National Insurance Co.Ltd.,
Branch Office-I,
Thanthai Periyar Market Complex,
P.B.No.15, Salem-636 001. ...Respondent/Appellant

2.Srinivasan

3.Bhoopathy Rajan ... Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act and
Cross Objection under Order 41 Rule 22 of CPC, against the
judgment and decree dated 24.07.2009 in MCOP No.675 of 2005 on
the file of the Motor Accidents Claims Tribunal (Additional
District Judge), Fast Track Court-I, Salem.

For Appellant in CMA : Mr.J.Chandran
and R1 in Cros.Obj.

For R1 & R2 in CMA and : No appearance
R2 & R3 in Cros.Obj.

For R3 in CMA and : Mr.K.Selvaraj
Cross Objector

COMMON JUDGMENT

The case in brief, is as follows:

On 12.03.2005 at about 09.00 hours, the first respondent in CMA / second respondent in Cross Objection, was riding his scooter bearing Reg.No.TN-27-P-0542 along with his father travelling as a pillion rider, on the Salem - Sankari Main Road. When they reached Annathanapatty Vegetable Market near EB Office, the auto-rickshaw bearing Reg.No.TN-27-1609, belonging to the third respondent in CMA and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner at high speed and dashed against the scooter. Due to the same, both the rider and pillion rider of the scooter fell down and both of them sustained grievous injuries all over the body. The rider of the scooter / first respondent in CMA filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.56,372/- with interest at the rate of 7.5% per annum from the date of petition. The said sum has been directed to be paid by the third respondent in CMA/Cross objector, and the appellant Insurance Company, jointly and severally.

2.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal and the owner of the auto-rickshaw has filed the Cross Objection.

3.The learned counsel for the appellant Insurance Company has submitted that the Tribunal ought to have held that the accident occurred solely due to the rash and negligent act of the injured and should have exonerated the Insurance Company from all liabilities since there was violation of the insurance policy, permit provisions and Motor Vehicles Act. It is also submitted that the compensation awarded by the Tribunal is exorbitant and excessive.

4.The learned counsel for the third respondent in CMA / Cross Objector / owner of the vehicle has submitted that the auto-rickshaw in question was purchased by one Bhoopathy Rajan

(R2 in CMA / R3 in Cros.Obj.) well before the date of accident, ie. on 12.10.2004 and the name transfer in the RC Book was also effected on 12.10.2004 itself and the same was endorsed by the Assistant Registering Authority in the RC Book on 19.10.2004. Therefore, at the relevant point of time, ie., 12.03.2005 (date of accident), the said Bhoopathy Rajan became the absolute owner of the auto-rickshaw and hence the cross objector is in no way responsible for any liability.

5. Heard the learned counsel for the appellant Insurance Company and the learned counsel for the Cross Objector and perused the materials and evidence available on record carefully and meticulously.

6. Considering Exs. P1, 3, 4 and 5, viz. First Information Report, Motor Vehicle Inspector Report, Rough Sketch and Charge Sheet, respectively, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the auto-rickshaw. This Court is not inclined to interfere with the said factual finding rendered by the Tribunal.

7. Even though it was deposed by the second respondent in CMA before the Tribunal that he purchased the auto-rickshaw from the Cross Objector, both of them were impleaded as parties before the Tribunal. Further, both of them as well as the Insurance Company have pleaded before the Tribunal in their counter statements that the accident had occurred only due to the rash and negligent driving of the driver of the auto-rickshaw. Further, even though it was pleaded before the Tribunal that there was change of ownership of the auto-rickshaw well before the date of accident, the fact remained that the policy stood only in the name of the Cross Objector at the relevant point of time. Furthermore, no documents have been filed before the Tribunal to substantiate the claim that the auto-rickshaw in question has been purchased by the said Bhoopathy Rajan from the Cross Objector, well before the accident. In these circumstances, the Tribunal ordered both the Insurance Company and the Cross Objector to pay the compensation jointly and severally, which this Court is not inclined to interfere.

8. With regard to quantum of compensation, the Tribunal has awarded a sum of Rs.56,372/-, comprising of Rs.13,372/- in respect of medical expenses, Rs.15,000/- towards loss of income, shock and suffering, Rs.20,000/- towards disability and Rs.8,000/- towards injuries. The amounts awarded by the Tribunal towards these heads are very reasonable and hence the same does not require any interference.

9.In the result, both the Civil Miscellaneous Appeal and the Cross Objection are dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company and the Cross Objector are directed to deposit the award amount with interest, jointly and severally, as ordered by the Tribunal, 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 in CMA / claimant, is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

KM

To

- 1.The Motor Accidents Claims Tribunal
(Additional District Judge), Fast Track Court-I, Salem.
 - 2.The Section Officer,
VR Section, Madras High Court.
- +1cc to Mr.K.Selvaraj, Advocate SR.No.71652

C.M.A.No.3340 of 2009
and M.P.No.1 of 2009
and
Cros.Obj.No.153 of 2010

LN (CO)
GMY (06/08/2020)

WEB COPY