

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.514 of 2009 and
M.P.No.1 of 2009

New India Assurance Co Ltd
46, Moore Street
Chennai - 1

Appellant / 3rd Respondent

Vs

1. Gangadharan @ Kalaivanan
respondent/Petitioner

1st

2. N.V.Ramalingam

3. R.Dhamodharan

2nd Respondent & 3rd Respondent /
Respondents 1 & 2

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 29.07.2008 made in M.C.O.P.No.4478 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.II, Chennai.

For Appellant : Mrs.R.Sreevidhya
For Respondents: R1 - No appearance
R3 - Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the award dated 29.07.2008 passed by the Tribunal in MCOP.No.4478 of 2003.

2.The case in brief, is as follows:

On 29.06.2000, at about 18.00 hours, the 1st respondent / claimant was proceeding in his bicycle on 100 feet Road. At that time, the Ambassador Car bearing Regn.No.TDR 3225 and a Van bearing Regn.No.TN04 Z 3004 were coming in a rash and negligent manner and hit the cycle from behind, while the drivers of both the vehicles were trying to overtake each other, due to which, the claimant was dragged on to some distance and the van ran over his head. Due to the said impact, he also received grievous injuries all over his body. Stating that the accident had happened only due to the

rash and negligent act on the part of the drivers of both the vehicles, the claimant filed a claim petition claiming a compensation of Rs.3,00,000/-. After an elaborate trial, the Tribunal has awarded a total compensation of Rs.1,20,000/- with interest at the rate of 7.5% per annum from the date of petition. Aggrieved over the same, the appellant insurance company has filed this appeal.

3. Heard the learned counsel for the appellant. Despite the service of notice and the name of the first respondent/claimant having been printed in the cause list, there is no representation on his behalf. However, this appeal is taken up for final disposal, considering the paucity of time.

4. The learned counsel for the appellant submitted that the Tribunal has erred in holding that the driver of the van was also found guilty of negligence, without considering Ex.P1-FIR and Ex.R7-charge sheet, as per which, the driver of the Car was responsible for the accident and he was convicted for the same by the Criminal Court. The learned counsel also submitted that the disability taken by the Tribunal at 25% is excessive, when there was no disability suffered by the first respondent/claimant. Hence, the award of the Tribunal needs interference by this Court.

5. A perusal of the award would go to show that the Tribunal has taken into consideration the evidence of PW1/claimant and RW1 and RW2/officials of the appellant Insurance Company coupled with Ex.P.1 First Information Report and Exs.R1 to R7 -documents pertaining to the offending vehicles including insurance policy and criminal court judgement and held that due to rash and negligent driving of the drivers of both the car and van, the accident had happened. While holding so, the Tribunal has taken note of the fact that the Car was insured on 03.07.2000, whereas the accident had happened on 29.06.2000 i.e., after 4 days from the date of accident and hence, rightly fastened 50% liability on the owner of the said Car. As the driver of the van was also responsible for the accident, the Tribunal has fastened another 50% liability on the insurer of the said van, who is the appellant herein. This Court is of the considered opinion that the said findings rendered by the Tribunal are based on the weightage of evidence, probabilities of case and settled principles of law and hence, there is no need to interfere with the same.

6. As far as the quantum of compensation, P.W.1 has deposed in his evidence that due to the accident, he sustained the following injuries:

- ◆ Fracture in the left hip
- ◆ Skin loss on the upper aspect of both thigh
- ◆ Skin loss over dorsem of left fore arm
- ◆ Abrasion over left shoulder joint 3 X 2

- ◆ Abrasion on the upper half of both legs

The testimony of P.W.1 was corroborated by P.W.2/doctor, who has issued Ex.P6 -disability Certificate to the extent of 35%. Considering those oral and documentary evidence and also having regard to the nature of injuries sustained by the first respondent/claimant, the Tribunal has taken disability at 25% and awarded Rs.25,000/- towards disability, which is fair and just and hence, the same warrants no interference by this Court. Further, the Tribunal has awarded Rs.15,000/- towards pain and suffering, Rs.71,000/- towards medical expenses, Rs.3,000/- towards transport expenses, Rs.4,000/- towards extra nourishment and Rs.2,000/- towards loss of amenities, which in the opinion of this Court, are just and reasonable and the same cannot be treated as excessive or exorbitant at any stretch of imagination and hence, the same need not be interfered with.

7. In the result, affirming the award of the Tribunal, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant / Insurance Company shall deposit 50% of the compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount lying in the deposit to the Savings Bank Account of the claimant/1st respondent through RTGS within a period of one week thereafter. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vrn/rk

To

1. The Motor Accident Claims Tribunal/
Additional District Judge, Fast Track Court No.II, Chennai
2. The Section Officer
V.R. Section
Madras High Court
Chennai 104

+1cc to Mrs.R.Sreevidhya , Advocate SR.No. 72815

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A.SK(04/12/2019)

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