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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NOS.703 & 704 OF 2009

AND

M.P.NOS.1 & 1 OF 2009

National Insurance Company Limited,  
Rep. by its Branch Manager,  
Myladuthurai.

... Appellant/2<sup>nd</sup> Respondent  
in both appeals

Vs.

1.Basheer

2.M.Raja

... Respondents  
in C.M.A.No.703 of 2009

1.Babu

2.M.Raja

... Respondents  
in C.M.A.No.704 of 2009

Prayer :

Civil Miscellaneous Appeals in C.M.A.Nos.703 and 704 of 2009 filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree, dated 11.04.2008, in M.C.O.P.Nos.272 and 266 of 2005 respectively, on the file of the Motor Accident Claims Tribunal (Sub Court), Hosur.

For Appellant : Mr.D.Bhaskaran

For R2 : Mr.D.Gubendraguna Balan

#### C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed by the appellant Insurance Company against the common award dated 11.04.2008, passed by the 'Motor Accident Claims Tribunal (Sub-Court), Hosur' (hereinafter referred to as 'the Tribunal'), in M.C.O.P.Nos.272 and 266 of 2005.



2.The brief facts of the case would run thus :

On 21.04.2005, the first respondent in CMA No.703 of 2009 Basheer was riding the motor-cycle, bearing Registration No.TN-29-L-5468 in the Hosur-Krishangiri National Highway. The first respondent in CMA No.704 of 2009 was the pillion rider. When the vehicle reached near Popular petrol bunk, they tried to overtake a lorry, bearing Registration No.TN-28-Y-2786, belonging to the 2<sup>nd</sup> respondent and insured with the appellant Insurance Company. At that time, the driver of the lorry, without giving any signal, in a rash and negligent manner, turned the lorry towards right side and knocked the motorcycle, due to which, both of them sustained injuries. Immediately, they were taken to the hospital and were given treatment. They filed individual claim petitions in M.C.O.P.Nos.272 and 266 of 2005, claiming a total compensation of Rs.5,00,000/- and Rs.50,000/- respectively. Considering the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,15,600/- and Rs.24,500/-, respectively, with interest @ 7.5% p.a. from the respective dates of petitions. The Tribunal fixed the negligence on the part of the rider of the motorcycle and the driver of the lorry in the ratio of 30:70 and accordingly fixed the liability at 70% on the part of the appellant Insurance Company.

3.Aggrieved by the awards fixing 70% liability, the appellant Insurance Company has filed these appeals.

4.Learned counsel for the appellant Insurance Company submitted that the accident was solely due to the negligence of the rider of the motorcycle. He further contended that the rider was not possessing the valid driving licence at the time of accident. He submitted that the Investigating Authority closed this case as "mistake of fact", after enquiry. He concluded his arguments by contending that, in any event, the amount awarded by the Tribunal is excessive.

5.This Court has also heard the submissions of the learned counsel for the second respondent in these appeals and perused the materials available on record.

6.On a reading of the judgment passed by the Tribunal, it is seen that, the appellant had not disputed the involvement of the lorry, insured with them, in the accident. A further reading would show that P.Ws.1 and 2 - injured, in their evidence, deposed that on 21.04.2005, they were travelling in the motorcycle bearing Registration No.TN-29-L-5468 in the Hosur-Krishangiri National Highway near Poppular petrol bunk; when they tried to overtake the lorry bearing Registration No.TN-28-Y-2786, the driver of the lorry, in a rash and negligent manner



and without any signal, turned the vehicle towards right side and knocked the motorcycle, due to which, they sustained injuries. It is also seen that the First Information Report (Ex.P1) has been filed against the driver of the lorry. While that being the case, the driver of the lorry was not examined. Mr.Manivel (R.W.1), the sole witness on the side of the appellant had stated that he was not personally aware of anything about the accident. The charge-sheet (Ex.R1) and the Investigation Report (Ex.R2), which are the outcome of criminal proceedings of the case, were marked on the side of the appellant, however, the same could not be relied upon in a petition for claim, in the light of the dictum of the Hon'ble Supreme Court in Shabbir Ahmad and another v. M.P.S.R.T.C., Bhopal and others [1984 ACJ 525 (MP)]. The Tribunal, taking note of all the above, and on an analysis of the oral and documentary evidence on record, came to the conclusion that the accident was due to the negligence of the driver of the lorry.

7.Nevertheless, having regard to the fact that, Basheer (P.W.1), driver of the motor-cycle, was not possessing the valid driving licence at the time of accident, which he has admitted during cross-examination, the Tribunal was of the view that, there was contributory negligence on the part of Basheer also, and fixed the negligence to the extent of 30% on him and the remaining 70% on the part of the driver of the lorry, which, according to this Court, is fair and just and warrants no interference.

8.Insofar as the quantum of compensation awarded to the first respondent in C.M.A.No.704 of 2009, though he claimed Rs.50,000/- under various heads in his claim petition, the Tribunal, upon perusal of wound-certificate (Ex.P10), found that he sustained five simple injuries and rightly awarded Rs.30,000/- under the head 'pain and suffering' and Rs.5,000/- towards extra-nourishment and transportation charges, which according to this Court, are fair, just and reasonable and hence, the same need not be interfered.

9.With regard to quantum of compensation awarded to the first respondent in C.M.A.No.703 of 2009, Dr.R.Rangaraj (P.W.3), in his evidence, has stated that the claimant sustained bone fracture on his head and many other ailments, as a result of which, he suffers from a permanent disability of 40%. The disability certificate to that effect was also marked as Ex.P13. In the absence of any documentary evidence to show the income of the claimant, the Tribunal assumed his monthly income to be Rs.3,500/- and applied a proper multiplier of 15 and awarded a sum of Rs.2,52,000/- towards loss of earnings due to his disability. It is trite that, physical disability of a person will proportionately contribute to the loss of his/her future



earning capacity. Hence, the Tribunal is justified in awarded the aforesaid amount towards loss of earnings due to disability. That apart, the Tribunal, upon perusal of all medical records and bills produced before it, has awarded Rs.30,000/- towards pain and suffering and Rs.6,000/- towards medical expenses, which are fair, just and reasonable and hence, the same warrant no interference.

10.In fine, these Civil Miscellaneous Appeals are dismissed, confirming the common judgment and decree dated 11.04.2008, passed by the Tribunal, in M.C.O.P.Nos.266 and 272 of 2005. No costs. Consequently, connected Miscellaneous Petitions are closed.

11.Accordingly, the appellant Insurance Company is directed to deposit the award amounts with interest and costs, as ordered by the Tribunal, after deducting the amounts if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the same on making proper application before the Tribunal.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal  
(Sub Court), Hosur.
2. The Section Officer,  
VR Section, High Court of Madras.

+lcc to Mr.D.Bhaskaran, Advocate, S.R.No.62699

C.M.A.Nos.703 & 704 of 2009  
and M.P.Nos.1 & 1 of 2009

BP(CO)  
CS/14/07/2021