

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.09.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.776 of 2009
and
M.P.No.1 of 2009

National Insurance Company Limited,
Sowcarpet Branch,
378 Mint Street,
First floor,
Chennai 600 079.

...Appellant/2nd respondent
vs.

1.K.Indhumathi (Minor)
represented by her father and
next friend K.P.Kandan
Residing at No.30,
Bharathi Street,
Tharamani, Chennai - 600 113.

...1st respondent/ Petitioner

2.M.Balaji

...2nd Respondents /1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 30.04.2007 passed in MCOP.No.3911 of 2004, on the file of the Motor Accidents Claims Tribunal, Fast Track Court No. I, Chennai.

For Appellant : Mr.S.Vadivel
For Respondents : No appearance

J U D G M E N T

The National Insurance Company Limited, the second respondent in MCOP.No.3911 of 2004, on the file of the Motor Accidents Claims Tribunal / Fast Track Court No. I, Chennai has filed the present appeal. The claimant filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.83,679/- for the injuries sustained by her in a road accident that took place on 10.07.1994.

2. The case of the claimant is that on 10.07.1994, at about 09.30 am, when she was travelling as a passenger in an auto bearing Registration No. TSJ 3645 on Taramani - Kandhanchavadi road, the driver of the auto drove the vehicle rashly and negligently and hit the bullock cart, as a result of which, she sustained injuries all over her body. According to the claimant, the accident took place due to the rash and

negligent driving of the driver of the auto bearing Registration No. TSJ 3645 belonging to the second respondent and that since the said auto was insured with the present appellant, the owner as well as the insurer are jointly and severally liable to pay compensation to her.

3. The second respondent, owner of the auto remained absent before the Tribunal and therefore, he was set ex-parte. The present appellant / National Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Judge, Fast Track Court No. I / Motor Accidents Claims Tribunal, Chennai after analysing the evidence on record, awarded a compensation of Rs.54,260/- together with interest at the rate of 7.5% per annum to the claimant. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.S.Vadivel, learned counsel appearing for the appellant contended that when the First Information Report was registered against the rider of the bullock cart, the Tribunal is wrong in fixing the entire responsibility on the driver of the auto bearing Registration No. TSJ 3645 and directing the owner as well as the Insurance Company to pay the entire compensation to the claimant.

5. No appearance on behalf of the respondents.

6. It is true that the First Information Report was registered against the rider of the bullock cart. However, a copy of the final report filed by the Police has not been filed before the Tribunal either by the claimant or by the respondents. The rough sketch (Ex.P2) is not also useful to find out as to who is responsible for the accident. Therefore, the Tribunal was left with the evidence of the claimant who has clearly deposed that the driver of the auto was rash and negligent in driving his vehicle and hit the bullock cart, as a result of which, the bullocks went berserk. No contra evidence was adduced by the present appellant to disprove the same. It is pertinent to point out that the owner of the auto remained absent before the Tribunal and was set exparte. In the facts and circumstances of the present case, the orders passed by the Tribunal are perfectly in order and I do not see any reason to interfere with the same.

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The order passed by the Tribunal is upheld.

(iii) The appellant / National Insurance Company Limited is directed to deposit the compensation awarded by the Tribunal i.e., Rs.54,260/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the

date of claim petition till the date of deposit to the credit of MCOP.No.3911 of 2004 on the file of the Motor Accidents Claims Tribunal / Fast Track Court No. I, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first respondent/claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar(Co mdu)

//True Copy//

Sub Assistant Registrar

mbi

To

The Motor Accident Claims Tribunal,
Fast Track Court No.I,
Chennai.

Copy to:

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

+lcc to Mr.S.Vadivel , Advocate SR.No. 82223

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A.SK(21/09/2020)

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