

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1804 of 2011 and
M.P.No.1 of 2011

National Insurance Company Limited,
Branch Office, No.12, K.K.Road,
Muruga Theatre Complex,
Villupuram

...Appellant/2nd Respondent

Vs.

1. Mathivanan
- 2.S.Abbas
- 3.J.Kumar

4.National Insurance Co. Ltd.,
Branch Office, No.12, K.K. Road,
Muruga Theatre complex,
Villupuram.

... Respondents/Petitioners & Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree passed in M.C.O.P.No. 148 of 2004, dated 08.02.2007, on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Judge), Villupuram.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : No appearance for R1
R2 to R4 - Given up

JUDGMENT

This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 148 of 2004, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Villupuram.

2.The brief case of the first respondent/claimant is as follows:

(i) On 02.02.2004, the first respondent/claimant was riding a Hero Honda motorcycle bearing Registration No. TN 32 B 1774 and was proceeding from P.S.Palayam to Villupuram. At about 18.00 hours, while, he was nearing Gengarampalayam I.T.I, an Ambassador car bearing Registration No. MDG 3757 coming from the opposite direction driven rashly and negligently, dashed against

the motorcycle, as a result of which, the first respondent/claimant sustained grievous injuries, resulting in fracture of his leg.

(ii) The injured first respondent/claimant was first admitted in the Asvini Hospital, villupuram taking treatment for two days from where he was transferred to Government Hospital, Villupuram. The first respondent/claimant is now suffering from permanent disability. He is not able to walk even today. The disability is permanent and at his young age the first respondent/claimant had been totally incapacitated and his future life had been subjected to shambles.

(iii) According to the first respondent/claimant, the rash and negligent driving of the driver of the Ambassador car bearing Registration No. MDG 3757 was the cause of the accident, and that, since, the said car was insured with the present appellant, both the owner of the said car and the present appellant, are jointly and severally liable to pay compensation of Rs.3,00,000/- to him.

3. The second and the third respondents herein were absent before the Tribunal and hence were set ex-parte. The National Insurance Company Limited contested the claim petition. The learned Tribunal after going through the oral and documentary evidence adduced before them, awarded compensation of Rs.1,01,800/- together with interest at the rate of 7.5% per annum to the first respondent/claimant. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited has preferred this Appeal under Section 173 of the Motor Vehicles Act.

4. Heard the learned counsel appearing for the appellant/ Insurance Company.

5. On perusal of the orders passed by the Tribunal and the records placed before the Tribunal, it is seen that, the Tribunal after going through FIR (Ex.P1), Insurance Policy of the motorcycle (Ex.P2), Insurance policy of the car (Ex.P3) and driving licence (Ex.P5) and also based upon the deposition of Madhivanan (PW1) came to a conclusion that the accident had taken place due to the rash and negligent driving of the driver of the Ambassador car bearing Registration No. MDG 3757.

6. Dr. Bernatraj (PW2), has assessed the disability of the first respondent/claimant as 26%. However, the Tribunal after giving certain reasons fixed the disability as 15%. Taking note of the nature of the injuries and their effects, the Tribunal has arrived to a conclusion that it is a 'functional disability' and accordingly adopted multiplier of 17. The Tribunal fixed

the notional income of the first respondent/claimant as Rs.3,000/- and awarded a sum of Rs.91,800/- as compensation. The Tribunal has awarded a sum of Rs.10,000/- towards 'pain and sufferings'. Taking into consideration, the entirety of the case and the nature of the injury and also the period for which the first respondent/claimant was treated as an inpatient, the quantum of compensation awarded by the Tribunal could not be said to be excessive.

7. In view of the fact, that, the Tribunal has not awarded any amount towards the other non-conventional heads, this court is of considered view that confirming the quantum of compensation awarded by the Tribunal at a sum of Rs.1,01,800/- would meet the ends of justice. Therefore, the plea taken by the Insurance Company stands negative and this appeal is liable to be dismissed.

8. In the result

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

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

(iii) The present appellant - National Insurance Company Limited is directed to deposit the entire compensation awarded by the Tribunal i.e., Rs.1,01,800/- (if not 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 M.C.O.P.No. 148 of 2004, dated 08.02.2007, on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Judge), Villupuram within a period of eight weeks from the date of receipt of a copy of this order.

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

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Principal District Court,
Villupuram.

2.The Section Officer

VR Section, High Court, Madras 104.(2 copies)
+1 CC to Mr.M.Krishnamoorthy, Advocate sr 17691.

C.M.A.No.1804 of 2011 and
M.P.No.1 of 2011

SR(CO)
SP(10/06/2019)



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