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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.178 of 2015

and M.P.No.1 of 2015

The Branch Manager,
M/s.National Insurance Co. Ltd.,
No.63, Rasi Plaza,
West Pradhakshinam Road,
Karur. ..Appellant / 2nd Respondent

- Vs -

1.Thiru.K.Shyed Mohammed ..1st Respondent / Petitioner

2.Thiru.M.Saravanan ..2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.02.2013 made in M.C.O.P.No.1013 of 2010, on the file of the Motor Accident Claims Tribunal, Principal District Court, Tiruppur.

For Appellant : Mr.J.Chandran

For R1 : Mr.MA.P.Thangavel

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company, challenging the award dated 07.02.2013 made in M.C.O.P.No.1013 of 2010, on the file of the Motor Accident Claims Tribunal, Principal District Court, Tiruppur.

2.The appellant-Insurance Company is 2nd respondent in M.C.O.P.No.1013 of 2010, on the file of the Motor Accident Claims Tribunal, Principal District Court, Tiruppur. The 1st respondent filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.08.2010. The Tribunal,



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considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent and directed both 2nd respondent/owner as well as the appellant-Insurance Company being insurer of the said lorry to pay a sum of Rs.1,98,700/- as compensation to the 1st respondent jointly and severally. Against the said award dated 07.02.2013 made in M.C.O.P.No.1013 of 2010, granting compensation to the 1st respondent, the appellant-Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing negligence on the part of the driver of the lorry, while the accident has occurred when the 1st respondent suddenly crossed the road. The Tribunal has awarded excessive amount towards 39.7% disability, without following the judgments of Hon'ble Apex Court and this Court and prayed for setting aside the award of the Tribunal.

4.Per Contra, learned counsel appearing for the 1st respondent contended that the accident has occurred only due to rash and negligent driving by the driver of the lorry and FIR was registered only against the driver of the lorry. The 1st respondent proved the same by letting in oral and documentary evidence. The amounts awarded by the Tribunal under different heads are meagre and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as learned counsel appearing for the 1st respondent and perused the materials available on record.

6.From the materials available on record, it is seen that the contention of the 1st respondent is that while he was riding bicycle, the driver of the lorry drove the lorry in a rash and negligent manner and dashed against the 1st respondent and caused the accident. To substantiate this contention, the 1st respondent who is the injured eyewitness examined himself as P.W.1 and deposed the manner of the accident. He also marked Ex.P1-FIR which was registered against the driver of the lorry. The driver of the lorry was examined as R.W.1 and he deposed that the accident has occurred only due to the negligent act on the part of the 1st respondent. The Tribunal considering the evidence of P.W.1, RW1 and Ex.P1/FIR, held that the evidence of PW1 is acceptable and rejected the evidence of RW1. The Tribunal has held that the accident has occurred only due to rash and negligent driving by the driver of the lorry and directed the appellant as insurer of the lorry and 2nd respondent as owner of the lorry to pay compensation to the 1st respondent jointly and severally. There is no error in the said finding of the Tribunal warranting interference by this Court.



7.As far as quantum of compensation is concerned, the 1st respondent examined P.W.3-Doctor to prove the nature of injuries. P.W.3/Doctor has deposed that the 1st respondent suffered multiple injuries and certified the disability of the 1st respondent at 39.7%. Considering the evidence of P.W.3/Doctor and nature of injuries sustained by the 1st respondent, the Tribunal has applied multiplier method and awarded compensation towards disability, which is in order. The total compensation awarded by the Tribunal is not excessive warranting interference by this Court.

8.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.1,98,700/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. Both the appellant-Insurance Company as well as the 2nd respondent are directed to deposit the award amount together with interest and costs, jointly and severally, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Principal District Judge,
(Motor Accident Claims Tribunal),
Tiruppur.

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

+1 cc to M/s.J.Chandran, Advocate, S.R.No.29274

+1 cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.29953

C.M.A.No.178 of 2015
and M.P.No.1 of 2015

CP(CO)
SSM(30/09/2019)