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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2019

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2398 of 2013

and

M.P.No.1 of 2013

The Divisional Manager,
National Insurance Company Ltd.,
Officers Line, Vellore,
Vellore District.

... Appellant/2nd respondent

Vs.

1. Jothi ... 1st Respondent/petitioner
2. Gowthan Chand Jain ... 2nd Respondent/1st respondent
(Remained exparte in the this Court)

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the Judgment and Decree dated 30.03.2012 passed in M.C.O.P.No.90 of 2007 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Gudiyatham, Vellore.

For Appellant : Mrs.K.Saraswathi

For Respondents : Mr.T.Dhanyakumar - R1
R2 - Ex parte

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 30.03.2012 passed in M.C.O.P.No.90 of 2007 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Gudiyatham, Vellore.

2. It is the case of the appellant that on 25.12.2006, the first respondent went to one Gowtham Chand's Land at Naikaneri as a Coolie in his Coconut thoppu and returning to home in his tractor and trailer along with other coolies. When the tractor was nearing forest check post, the driver was driving the tractor in a rash and negligent manner. In the result, the first respondent fell down from the tractor and sustained injuries all



over the body. The first respondent is the claimant and the second respondent is the owner of the tractor and trailer and the appellant is the insurer of the vehicle. The first respondent herein, has filed a Claim Petition before the Motor Accident Claims Tribunal (Subordinate Court, Gudiyatham, against the owner and insurer of the tractor and trailer viz., second respondent and the appellant herein, claiming a sum of Rs.5,00,000/- as compensation under various heads.

3. Denying all the allegations made by the claimant, the appellant insurance company has filed a counter affidavit before the Tribunal, stated that there is no such accident occurred as stated in the petition and there is no negligence on the part of the driver of the tractor. The accident took place only due to rash and negligence of the claimant who suddenly attempted to cross the road. Further, the Tribunal has awarded a sum of Rs.80,000/- is excessive. Therefore, the appellant Insurance Company is not liable to pay any compensation to the claimant. Hence, sought for dismissal of the petition with costs.

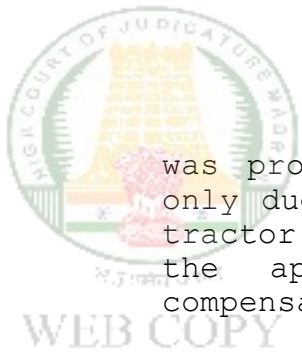
4. During the trial, before the Tribunal, in order to prove his case, the first respondent/claimant examined as many as two witnesses viz., P.W.1 and P.W.2 and marked the following documents:-

- Ex.1 : Copy of the F.I.R.
- Ex.2 : Copy of the Insurance Policy
- Ex.3 : Copy of the Insurance Policy
- Ex.4 : Certified copy of the Accident Register
- Ex.5 : Treatment Certificate
- Ex.6 : Vellore Government Hospital receipt
- Ex.7 : Vellore Government Hospital receipt
- Ex.8 : Original Scal report
- Ex.9 : X-ray
- Ex.10:Original Disability Certificate

On the side of the respondents, One Gopal was examined as R.W.1 and two documents were filed.

5. The Tribunal, considering the pleading, oral and documentary evidence, allowed the petition in favour of the claimant and awarded a sum of Rs.80,000/- as compensation to the claimant. Aggrieved by the said award, the appellant/Insurance company has filed this appeal before this Court.

6. On perusal of the award dated 30.03.2012 passed by the Motor Accident Claims Tribunal (Subordinate Court), Gudiyatham, it is seen that the accident has not been disputed, and only the cause of accident, i.e. whether the accident had occurred due to the rash and negligent driving of the driver of the tractor or due to the negligence of the claimant, was disputed. Though it



was proved before the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the tractor. Therefore, the Tribunal has come to the conclusion that the appellant Insurance company is liable to pay the compensation to the claimant for the injuries.

7. On careful perusal of the materials, the first respondent is the claimant, aged about 37 years at the time of accident. As far as quantum of compensation is concerned, P.W.2 Doctor has assessed the percentage of the disability at 35% and the Tribunal has awarded a sum of Rs.70,000/- towards the permanent disability, which is not an exaggerated one. The Tribunal has adopted the correct multiplier method and rightly assessed the loss of income due to permanent disability. Hence, the same does not require any interference by this Court. The amounts awarded towards other heads are also reasonable and hence, the same are confirmed.

8. In view of the above, this Court do not find any error in the award dated 30.03.2012 passed by the Tribunal in M.C.O.P.No.90 of 2007. Hence, this Court is not inclined to interfere with the same.

9. In the result, the Civil Miscellaneous Appeal is dismissed and a sum of Rs.80,000/- awarded by the Tribunal as compensation to the first respondent/claimant is hereby confirmed. The appellant Insurance company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent/claimant, is permitted to withdraw the compensation as awarded by the Tribunal along with interest and costs, less the amount, if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(ADI MDU)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
(Subordinate Court), Gudiyatham, Vellore District.



2. The Section Officer,
VR Section, High Court, Chennai-104

+1cc to Mr.T.Dhanyakumar, Advocate SR.No.102660

+1cc to Mr.C.R.Krishna Moorthy, Advocate SR.No.102457

C.M.A.No.2398 of 2013
and
M.P.No.1 of 2013

PVS (CO)
GMY (27/08/2020)