

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.53 of 2015

and

M.P.No.1 of 2015

The Branch Manager,
The Shriram General Insurance Co. Ltd.,
Having office at Land Mark Building,
2nd Floor No.20/B, 1st East Main Road,
Gandhi Nagar,
Vellore - 632 006. ... Appellant/2nd Respondent

Vs.

1.Deenadayalan 1st Respondent/Petitioner

2.Nandakumar 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 24.09.2014 made in M.C.O.P.No.243 of 2011 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Vellore.

For Appellant : Mr.S.Dhakshnamoorthy

For R1 : Mr.C.Prabakaran

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 24.09.2014 made in M.C.O.P.No.243 of 2011 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Vellore.

2. The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.243 of 2011 on the file of Motor Accident Claims

Tribunal, Chief Judicial Magistrate Court, Vellore. 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 19.05.2011. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Sumo car belonging to the 2nd respondent and directed the appellant/Insurance Company to pay a sum of Rs.1,33,378/- as compensation to the 1st respondent. Against the said award dated 24.09.2014 made in M.C.O.P.No.243 of 2011, 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/Insurance Company contended that the driver of the vehicle did not possess driving license at the time of the accident. The appellant obtained information under Right to Information Act from the Regional Transport Office, Tanjore and marked the same as Ex.R5. The Tribunal erroneously rejected the contention of the appellant. The Tribunal ought to have ordered pay and recovery. The Tribunal erred in accepting 35% disability for fracture of Tibia bone. The Tribunal failed to note 35% is only with regard to particular limb of the body and not for the whole body and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the 1st respondent contended that the Tribunal considering the evidence of P.W.2/Doctor and accepting the same, has awarded compensation for 35% disability and the same is in order. The appellant has not proved that driver of the vehicle did not possess driving license at the time of accident and prayed for dismissal of the appeal.

5.Though 2nd respondent/owner of the vehicle entered appearance through the counsel, there is no representation on behalf of him at the time of arguments.

6.Heard the learned counsel appearing for the appellant/Insurance Company as well as the 1st respondent and perused the materials available on record.

7.From the materials available on record, it is seen that the appellant has contended that the driver of the Tata Sumo car belonging to the 2nd respondent did not possess driving license at the time of the accident and the appellant proved the same by marking reply received from the Regional Transport Office, Tanjore as Ex.R5. The appellant has not examined any official from the Regional Transport Office, Tanjore or public information officer to prove Ex.R5. The Tribunal rejected Ex.R5

on the ground that the same was not issued by the competent authority. The Tribunal took note of the fact that the driver of the Tata Sumo car was not charge sheeted for not possessing driving license and considering the above materials, held that the appellant has failed to prove that driver of the vehicle did not possess driving license at the time of the accident. There is no error in the said finding of the Tribunal. The appellant has marked Ex.R5 letter written to the 2nd respondent/owner of the Tata Sumo car. The appellant has not produced any documents to show that the said letter was served to the 2nd respondent. As far as disability certificate issued by P.W.2/Doctor is concerned, P.W.2/Doctor has deposed the nature of injuries sustained by the 1st respondent and certified the percentage of disability as 35%. The appellant has not let in any contra evidence that the percentage of disability assessed by P.W.2/Doctor is excessive. The Tribunal has awarded compensation based on percentage method and not by multiplier method. In view of the same, the compensation awarded by the Tribunal for 35% disability is in order and the same does not warrant any interference by this Court.

8. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.1,33,378/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.243 of 2011. On such deposit, the 1st respondent/claimant 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/-

सत्यमेव जयते
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Vellore.

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

+1 cc to Mr.C.Prabakaran, Advocate, Sr.No. 30971
+1 cc to Mr.S.Dhakshnamoorthy, Advocate, Sr.No. 30965

C.M.A.No.53 of 2015
and
M.P.No.1 of 2015

SJ(CO)
CSL/09.07.2019



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