

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.687 of 2015

and

MP.No.1 of 2015

National Insurance Co. Ltd.,
Villupuram.

... Appellant/3rd Respondent in trial court

vs.

1. Selvaraj
2. State Express Transport Corporation,
Pallavan Salai, Chennai - 2.
3. Jayakumar

... Respondents/Claimant and first and
second Respondents in trial court

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 06.08.2014 made in M.C.O.P.No.294 of 2006 on the file of the Motor Accidents Claims Tribunal, Villupuram (First Additional Subordinate Court, Villupuram).

For Appellant : Mr.S.Vadivel

For R2 : Mr.K.J.Siva Kumar

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.74,000/- towards compensation to the first respondent/claimant due to the injuries sustained by him in a motor vehicle accident.

2. The case in brief is as follows:

On the fateful day, i.e., on 22.01.2004, at about 09.30 pm, the first respondent/claimant and his friends were travelling in an Ambassador Car bearing Registration No.TN-31-U 4699 belonging to the third respondent and insured with the appellant insurance company, from Radhapuram to Thumbur. When

the car was nearing Panayapuram Kuttu Road (Chennai-Kumbakonam Road), a TNSC bus bearing registration No.TN-01-N-6330 belonging to the second respondent Transport Corporation, came in a rash and negligent manner and dashed against the Car. Due to the said impact, the first respondent/claimant sustained grievous injuries. Stating that the accident had occurred due to the carelessness and negligence on the part of the driver of the bus, he filed a claim petition claiming a sum of Rs.5,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.74,000/- with interest at the rate of 7.5% per annum from the date of petition. Aggrieved over the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company submitted that the Tribunal has erred in concluding that the driver of the Car was also responsible for the accident and in fixing the liability on the appellant insurance company as well. He also submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant.

4. Per contra, the learned counsel for the second respondent/Transport Corporation submitted that after properly analysing the materials and evidence, the Tribunal has rightly fixed the liability on the transport Corporation, insurance company and owner of the Car jointly and severally and awarded the just compensation and hence, the same do not require any interference in the hands of this Court.

5. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.As regards the question on negligence, P.W.1/first respondent/ claimant stated in his evidence that on 22.01.2004 at 9.30pm, when he was travelling along with his friends, towards Thumbur in the Ambassador Car bearing Registration No.TN-31-U 4699, near Panayapuram Kuttu Road, the TNSC bus bearing registration No.TN-01-N-6330, came in a rash and negligent manner and dashed against the Car; and as a result of the same, he sustained grievous injuries. His evidence was corroborated by Ex.P1 -First Information Report, as per which, the criminal case was registered against the driver of the bus. Ex.P4 -Motor Vehicle Inspector's report reveals that the accident had not happened due to any mechanical defect of the bus. Placing reliance on the same and in the absence of any concrete material to disprove the same, the Tribunal has rightly concluded that the accident had occurred due to the rash and negligent driving of the driver of the bus, which finding this Court is not inclined to interfere.

7. With regard to liability, the Tribunal has fastened the same on the Transport Corporation and insurer as well as the insured of the car. The learned counsel for the appellant insurance company has contended that though the Tribunal has concluded that the driver of the bus was responsible for the accident, it erred in fastening the liability on the insurance company as well. On a perusal of the award, it is seen that the Tribunal has considered Exs.P4-registration certificate, P5-permit, P6-driving licence of the driver and P7-insurance policy relating to the Car and has found that the car, in which, the injured travelled at the time of accident, was covered with the insurance policy issued by the appellant insurance company and the driver of the vehicle was having valid driving licence. The Tribunal has further observed that no material was adduced either by the insurance company or by the owner of the vehicle to the effect that there was no negligence on the part of the driver of the Car. In such circumstances, there was composite negligence on the part of the drivers of both the vehicles and hence, the owner and the insurer of the vehicles should pay the compensation to the injured. Accordingly, the Tribunal has fastened the liability on the transport corporation and insurer as well as the insured of the Car jointly and severally, which in the opinion of this Court, is perfectly right and warrants no interference.

8. In respect of the quantum of compensation, the claimant has deposed in his evidence that he was 50 years old and was earning a sum of Rs.10,000/- per month as Union President and by doing Real Estate Business. However, no proof was produced to substantiate the same. The nature of the injuries sustained by P.W.1 was supported by the evidence of P.W.2/doctor, who issued Ex.P8 disability certificate to the tune of 40%. Ex.P9 is X-ray. The Tribunal, after considering the materials and evidence let-in by the first respondent/claimant, has determined Rs.40,000/- towards permanent disability, Rs.25,000/- towards pain and suffering, Rs.5,000/- towards Extra nourishment, Rs.3,000/- towards Transportation, Rs.500/- towards damage to clothes, Rs.500/- towards attender charges and thus, awarded Rs.74,000/- as total compensation. Having regard to the nature of the injuries sustained by the first respondent/claimant and period of treatment undertaken by him, the amounts so awarded by the Tribunal under the above heads, are just and very reasonable and hence, the same need not be interfered with by this Court.

9. In fine, affirming the award passed by the Tribunal, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant Insurance company, third respondent/owner of the Car and the second respondent Transport Corporation are directed to deposit the entire compensation amount with interest and costs, less the amount already deposited, if any, jointly or severally,

within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit, the Tribunal shall transfer the same to the savings bank account of the first respondent/claimant through RTGS within a period of one week thereafter.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.Motor Accidents Claims Tribunal,
The First Additional Subordinate Court,
Villupuram.

2.The Section Officer, V.R.Section,
Madras High Court,
Chennai 104

+lcc to Mr.S.Vadivel, Advocate, S.R.No. 90972

C.M.A.No.687 of 2015
and
MP.No.1 of 2015

RV (CO)
GN (29/06/2020)

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