

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.775 of 2012

and

M.P.No.1 of 2012

The Manager,
ICICI Lombard General Insurance Company Limited,
Zenith House,
Keshavrao Khade,
Marg Mahalaximi,
Mumbai - 400 034. Appellant/ 2nd Respondent

Vs

1.Kumar
A Person of Unconscious &
Unsound mind, rep. by its
wife Vasantha 1st Respondent/Petitioner

2.The Director
Emmaus Swiss Leprosy Project,
Palamaner, Chittor District,
Andhra Pradesh - 517 408. 2nd Respondent/1st Respondent

(R2 was set exparte before the Tribunal)

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 02.02.2011 made in MCOP No.158 of
2008 on the file of the Motor Accidents Claims Tribunal,
Additional District Judge, Fast Track Court, Dharmapuri.

For Appellant : M/s.R.Sreevidhya

For R1 : Mr.M.Selvam

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JUDGMENT

The case in brief, is as follows:

On 31.05.2007 at about 1.00 p.m., the first respondent was
proceeding in his TVS-50 moped bearing Reg.No.TN-27-M-6080 on
the Palamaner - V.Kotta Main Road. When he reached near
Danamiahgaripalli village near Venkatepalli Cross, the mini bus
bearing Reg.No.AP-03-T/R-7322 belonging to the second respondent

and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the first respondent. Due to the impact, the first respondent was thrown out and sustained severe head injuries and other injuries all over the body. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.7,30,244/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant has come up with this appeal.

2.The learned counsel for the appellant/Insurance Company has submitted that the Tribunal has erred in holding that the appellant is liable to pay the compensation without properly appreciating the evidence and exhibits. It is also submitted that the compensation awarded by the Tribunal is excessive.

3.Per contra, the learned counsel appearing for the first respondent/claimant has submitted that the Tribunal has taken into consideration each and every aspect and has awarded the compensation, which is nothing but just and hence, interference of the award is uncalled for.

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

5.P.W.2-Devaraj examined on the side of the injured, deposed before the Tribunal that he saw the accident and that the accident had occurred only due to the rash and negligent driving of the driver of the mini bus. Even though R.W.1-Balamurugan deposed before the Tribunal that the mini bus was driven by its driver carefully by following the traffic regulations, in view of discrepancies in the statements, the Tribunal disregarded his deposition and came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the mini bus. This Court is not inclined to interfere with the said factual finding rendered by the Tribunal.

6.As far as the quantum of compensation awarded by the Tribunal is concerned, the Tribunal has awarded a sum of Rs.6,48,000/- towards loss of income, Rs.78,244/- towards medical expenses and a sum of Rs.1,000/- each towards transport expenses, extra nourishment and loss of amenities respectively, in totalling Rs.7,29,244/- (wrongly mentioned as Rs.7,30,244/- in the judgment and decree). The Tribunal has relied upon the exhibits, evidence of witnesses, medical bills, treatment records, percentage of disability assessed by the Doctor and also took note of the II Schedule of the Motor Vehicles Act and all other aspects in a proper perspective and has awarded the

above amounts under various heads to the claimant. Further, this Court is of the considered view that the amounts awarded towards these heads are reasonable and justifiable and hence the same are confirmed.

7.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

8.The appellant / Insurance Company is directed to deposit the compensation amount of Rs.7,29,244/-, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four 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 same on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS-)

// True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
Additional District Judge, Fast Track Court,
Dharmapuri.

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

+lcc to Mr.M.Selvam, Advocate, sr no 73862
+lcc to M/s R.Sreevidhya, Advocate, sr no 75789

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PP(CO)
GS(19/05/2020)