

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.784 of 2019
and C.M.P.No.2238 of 2019

M/s.Oriental Insurance Company
Limited,
Cuddalore.

....Appellant/4th Respondent

Vs

1.B.Sivagami ...1st Respondent/Claimant

2.C.Senthamizh Selvi

3.United India Insurance
Company Limited
Cuddalore.

4.V.Meena ...R2 to R4/R1 to R3.

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.01.2003 made in M.C.O.P.No.353 of 2000 on the file of Motor Accidents Claims Tribunal, Sub Court, Chidambaram.

For Appellant : Mr.S.Arun Kumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 20.01.2003 made in M.C.O.P.No.353 of 2000 on the file of Motor Accidents Claims Tribunal, Sub Court, Chidambaram.

2.Heard the learned counsel appearing for the appellant and perused the materials available on record.

3.The appellant-Oriental Insurance Company is 4th respondent in M.C.O.P.No.353 of 2000 on the file of Motor Accidents Claims Tribunal, Sub Court, Chidambaram. The 1st respondent filed the above claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by her in the accident that took place on 28.05.2000. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent

driving by the drivers of both buses belonging to the 2nd respondent as well as 4th respondent and directed both the 3rd respondent as well as appellant being the insurers of the said buses to pay a sum of Rs.5,85,000/- as compensation to the 1st respondent, equally. Against the said award dated 20.01.2003 made in M.C.O.P.No.353 of 2000, the appellant/Oriental Insurance Company has come out with the present appeal challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal.

4. According to the appellant-Oriental Insurance Company, the Tribunal ought to have come to the conclusion that the driver of the bus belonging to the 3rd respondent is responsible for the accident in view of the fact that the complaint was lodged only against the driver of the said bus.

5. As per the evidence of PW1-1st respondent, the accident occurred due to rash and negligent driving by the drivers of both buses belonging to the 2nd respondent as well as fourth respondent. PW1 in her evidence deposed that while she was travelling in the bus, at that time, the bus belonging to the 4th respondent, which was coming in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the right side of the 2nd respondent bus and due to the said impact, the 1st respondent sustained injuries and her right hand was amputated. PW2-husband of the 1st respondent who also travelled in the said bus, in his evidence has corroborated the same. Ex.P1-FIR was lodged by the driver of the 4th respondent bus. The Tribunal held that since the driver of the 4th respondent bus was involved in the accident, Ex.P1-FIR cannot be considered. Ex.P2-Motor Vehicle Inspector's report shows that the damages were caused to the right side of the 2nd respondent bus and right back side of the 4th respondent bus. The Tribunal considering the evidence of PW1, PW2 and Ex.P2, held that the accident occurred due to rash and negligent driving by drivers of both buses belonging to the second and fourth respondents. There is no error in the said finding of the Tribunal warranting interference by this Court.

6. As far as quantum of compensation is concerned, it is the contention of the learned counsel for the appellant that the Tribunal has awarded higher compensation to the 1st respondent without any documentary evidence to prove the income of the 1st respondent.

7. PW1-1st respondent in her evidence deposed that she was aged 24 years at the time of accident and was earning Rs.2,500/- per month by working in a private company. In the accident, her right hand was amputated. PW4-Doctor certified the disability of the 1st respondent at 90%. Ex.P8-case sheet produced by the

JIPMER Hospital shows that 1st respondent was admitted in the said hospital as in-patient from 28.05.2000 to 12.06.2000 and she also took treatment on 26.06.2000, 04.07.2000, 21.07.2000 and 13.10.2000. As per Ex.P7-disability certificate issued by the JIPMER Hospital, 1st respondent has sustained 80% disability. Hence, the Tribunal has fixed the disability of the first respondent at 100%. The Tribunal in the absence of any evidence to prove the income of the 1st respondent, has fixed a sum of Rs.2,500/- per month as notional income of the 1st respondent, applied multiplier 17 and awarded a sum of Rs.5,10,000/- (Rs.2,500/- X 12 X 17) towards loss of income, which is in order. The Tribunal considering both oral and documentary evidence, has awarded a total sum of Rs.5,85,000/- to the first respondent under different heads. In my considered opinion, the compensation awarded by the Tribunal is just and reasonable and hence it does not warrant any interference by this Court.

8. In the result, the award of the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant-Oriental Insurance Company as well as 3rd respondent-United India Insurance Company are directed to deposit the entire amount awarded by the Tribunal along with interest and costs equally, 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, 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 Civil Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

kj/rst
To

1. The Subordinate Judge
Motor Accidents Claims Tribunal,
Subordinate Judge, Chidambaram.

2. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.S.Arun Kumar, advocate sr 8991

C.M.A.No.784 of 2019
and C.M.P.No.2238 of 2019

KK(CO)
SP(16/07/2019)