

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.06.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2884 of 2008

and

M.P.No.1 of 2008

Manager

National Insurance Company Ltd.,

Dharmapuri Branch Office,

No.88/F, Bye Pass Road,

Dharmapuri - 636 701.

... Appellant/2nd Respondent

Vs.

1.R.Parthiban

2.S.Selvakumar

... Respondents/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2006 made in M.C.O.P.No.310 of 2001 on the file of Motor Accident Claims Tribunal, Sub-Court, Hosur.

For Appellant : S.Vadivel

For R1 : Mr.S.Doraisamy for
V.Elangovan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order and decree dated 30.01.2006 passed by the Motor Accident Claims Tribunal, Sub-Court, Hosur, in M.C.O.P.No.310 of 2001.

2.Briefly stated facts are that the first respondent filed a claim petition claiming a compensation of Rs.5,00,000/- stating that on 21.09.2000, while he was travelling in the lorry bearing Regn.No.TN 39 E 1710 belonging to the second respondent and insured with the appellant insurance company, the driver of the lorry by name Dhanushkodi drove the vehicle rashly and negligently and hit a stationed tractor at Eachampatti Village, resulting in grievous injuries to the claimant. On a consideration of the materials and evidence adduced by the parties, the Tribunal has awarded a total compensation of Rs.1,90,000/- with interest at 9%pa from the date of petition. Aggrieved over the same, the appellant insurance company has

filed this appeal.

3.It is the contention of the learned counsel for the appellant that the first respondent had travelled in the vehicle as a gratuitous passenger at the time of accident and hence, the appellant insurance company is not liable to pay any compensation. The learned counsel also contended that the quantum of compensation awarded by the Tribunal is excessive and exorbitant and the same has to be reduced to some extent.

4.On the contrary, the learned counsel for the first respondent/claimant submitted that based on the evidence and materials, the Tribunal has rightly fastened the liability on the appellant insurance company and awarded the just compensation and hence, the same warrant no interference at the hands of this Court.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel for the first respondent and perused the materials available on record.

6.The first respondent/claimant examined himself as P.W.1, according to whom, the driver of the lorry drove the vehicle in a rash and negligent manner and dashed against the stationed tractor. His testimony was supported by Ex.P1 First Information Report. Further, Exs.P7 and P12-orders passed by the Sub Court, Hosur in MCOP.No.325/2001 arising out of the same accident, filed by the driver of the lorry, were marked with regard to fastening the liability on the appellant insurance company. There is no dispute with regard to the manner of accident. What was disputed is the liability of the appellant insurance company to pay compensation. Though it was putforth on the side of the appellant insurance company before the Tribunal that the claimant had travelled in the vehicle as a gratuitous passenger and hence, they were not liable to pay compensation, R.W.1 has categorically admitted that in MCOP.No.325/2001 arising out of the same accident, the Claims Tribunal directed the appellant insurance company to pay compensation to the driver of the lorry. The Tribunal placing reliance on those materials and evidence, has rightly fixed the negligence on the driver of the lorry and accordingly, fastened the liability on the appellant insurance company to pay compensation, which finding this Court is not inclined to interfere.

7.As regards the quantum of compensation, P.W.1/claimant has deposed that he was earning Rs.8,000/- per month as flower vendor; he took treatment at St.John Hospital, Bangalore from 22.9.2000 to 5.10.2000 as inpatient; and due to the injuries sustained in the accident, he could not walk, sit and stand as

done previously. Ex.P3 is the wound certificate. Ex.P4 is the medical slip. P.W.2 doctor has deposed that the claimant sustained grievous injuries in left knee, hip and left femur and he sustained 65% permanent disablement, due to which, he finds discomfort to walk, squat, stand, besides receiving pain while passing urine. The Tribunal, placing reliance on the oral and documentary evidence adduced by the first respondent/claimant and also in the light of the decision of this Court in 2002-3-LW-710 to 720, has awarded Rs.55,000/- towards pain and suffering, Rs.25,000/- towards loss of earning capacity, Rs.24,000/- towards medical expenses, Rs.6,000/- towards extra nourishment and Rs.80,000/- towards permanent disability, which in the opinion of this Court, are fair, just and reasonable, considering the nature of the injuries and the gravity of the permanent disablement sustained by the first respondent/claimant and hence, the same need not be interfered. Further, the rate of interest at 9%pa awarded by the Tribunal is quite reasonable and hence, the same is hereby confirmed.

8.Finding no merits, this appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant / Insurance Company is directed to deposit the compensation amount, as awarded by the Claims Tribunal, along with interest and costs, 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 Tribunal shall transfer the amount to the Savings Bank Accounts of the first respondent/injured / claimant, through RTGS, within one week thereafter.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

gbi/rk

To

- 1.The Sub-Judge,
Motor Accident Claims Tribunal,
Hosur.
- 2.The Section Officer,
V.R.Section,
High Court,
Chennai.

+1cc to Mr.S.Vadivel, Advocate SR.No.52571

+1cc to Mr.S.Doraisamy, Advocate SR.No.52696

C.M.A.No.2884 of 2008

and

M.P.No.1 of 2008

VG II (CO)

GMV(11/06/2020)