

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.3137 and 3138 of 2008

The New India Assurance Co Ltd.,  
No.48, Moore Street,  
2<sup>nd</sup> Line Beach, Chennai 600 001. ...Appellant in both C.M.As/  
2<sup>nd</sup> Respondent

Vs

J. Suraj Joshi ... R-1 in C.M.A.3137 of 2008/Claimant

J. Manoj Joshi ... R-1 in C.M.A.3138 of 2008/Claimant

M/s Bandwarilal Agarwala,  
L-102, Ashalakshmi Apartments,  
Ravi Nagar SQR. Nagpur. ...R-2 in both C.M.As/1<sup>st</sup> Respondent

These Appeals have been filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.Nos.786 and 787 of 2001, respectively, dated 31.07.2007, on the file of the Motor Accidents Claims Tribunal, I Fast Track Court, Chennai

For Appellant in : Mr.N. Vijayaraghavan  
both cases

For Respondent 1 : Mr.A.N.Vishwanatha Rao  
both cases

R-2 : Ex parte

COMMON JUDGMENT

The facts of the case are that on 23.10.1999 at about 4.00hours, the first respondent in these appeals were travelling as passengers in the Tata Estate vehicle bearing Registration No.MP23 L 2860 belonging to the second respondent and insured with the appellant Insurance Company, on the Chennai - Trichy High Road. When the vehicle reached near Kollapakkam Kaikati

Bridge, due to the rash and negligent driving of the driver of the Tata Estate vehicle, it hit the bridge. Due to the said impact, the first respondent in these appeals have sustained grievous injuries. Hence they filed claim petitions before the Tribunal claiming a sum of Rs.1,00,000/- and Rs.6,00,000/- respectively, as compensation. As against the said claims, the Tribunal has awarded Rs.16,060/- and Rs.78,818/- respectively, as compensation.

2.Branding the common award as disproportionate to the injuries sustained by the claimants, these Appeals have been preferred by the Insurance Company.

3.The learned counsel for the appellant/Insurance Company has submitted that the claimants had travelled in the vehicle as gratuitous passengers and hence the Insurance Company is not liable to pay any compensation to the claimants, on the ground of violation of policy conditions. On the other hand, it is submitted that the awards passed by the Tribunal are not in consonance with the injuries sustained by the claimants and hence the same needs considerable reduction.

4.Per contra, the learned counsel for the claimants/ first respondent(s) herein contended that the awards passed by the Tribunal are based on weightage of evidence and materials available on record and hence the same does not require any interference.

5.Heard both sides and perused the records.

6.Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Tata Estate vehicle, which finding is not disputed by both sides.

7.With regard to the contention of the appellant Insurance Company that the claimants had travelled in the vehicle as gratuitous passengers and hence the Insurance Company is not liable to pay any compensation to the claimants on the ground of violation of policy conditions. The Tribunal has not discussed the said issue in its judgment. But it is seen that the Insurance Company / appellant herein has neither let in any evidence nor marked any documents before the Tribunal, in this connection. Nothing prevented them from marking any documents or producing any evidence before the Tribunal. In these circumstances, this Court is not inclined to go into the said issue, at this length of time.

8.With regard to quantum, the Tribunal has properly analysed the evidence of P.W.3- Doctor with regard to the injuries suffered by the claimants and awarded the compensation amounts and hence the same does not require any interference in the hands of this Court.

9.In the result, the Civil Miscellaneous Appeals are dismissed. The appellant/Insurance company is directed to deposit the compensation amounts with interest and costs, as ordered by the Tribunal, less the amounts if any already deposited, within a period of six weeks from the date of receipt of the copy of this Judgment. On such deposit being made, the claimants are permitted to withdraw the same on making proper application before the Tribunal. No costs.

Sd/-  
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

srk/smn /rk

To

The Motor Accident Claims Tribunal,  
Fast Track Court No.I, Chennai.

Copy To : The Section Officer,  
VR Section, High Court,  
Madras- 104.

+1cc to Mr.A.N.Vishwanatha Rao, Advocate SR.No.54280

+1cc to Mr.N. Vijayaraghavan, Advocate SR.No.55112

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and 3138 of 2008

RSV(CO)  
GMY(19/02/2020)

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