

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2725 of 2006

and

M.P.No.1 of 2006

National Insurance Company Ltd.,
No,1272-1273, Mettur Road,
Palaniappa Complex,
Erode - 636 011.

... Appellant/2nd Respondent

Vs.

1. S.Anandan

2.M.Sampath

.. Respondents/ Petitioner /1st respondent

(The second respondent set exparte before the Tribunal.
Hence notice to the second respondent
may be dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.1.2006 made in MACTOP.No.1137 of 2003 on the file of Motor Accidents Claims Tribunal, Additional District Judge cum Special Judge, (Essential Commodities Act), Salem.

For Appellant : Mr. N.B.Surekha

J U D G M E N T

This appeal is preferred by the Insurance Company against the award of a sum of Rs.4,00,000/- 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 21.03.2003, the first respondent/claimant was travelling along with his friends in a TATA Indica Car bearing Registration No.KA 01 P7841 from Ooty to Chennai. At about 5.45pm, when the Car was proceeding on Salem - Chennai National Highway Road, near Shasanchavadi, a Avain Tankar Lorry bearing Registration No.TN 33 Q 1836 belonging to

the second respondent and insured with the appellant insurance company, came in a rash and negligent manner from the opposite direction and dashed against the Car. Due to the said impact, the driver of the Car died on the spot and the first respondent/claimant sustained grievous injuries. Stating so, the first respondent/claimant filed a claim petition claiming a compensation of Rs.15,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.4,00,000/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant insurance company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant - Insurance Company has disputed only the quantum of compensation awarded by the Tribunal. According to him, the compensation awarded is excessive, exorbitant and disproportionate to the injuries sustained by the first respondent and hence, the same has to be reduced to some extent.

4.Heard the learned counsel for the appellant and perused the materials placed before this Court.

5.Though this appeal was admitted way back in the year 2006, the appellant insurance company has not taken proper steps to serve papers on the respondent/claimant. However, considering the passage of time, this Court is inclined to proceed with this appeal, on merits.

6.The learned counsel for the appellant Insurance Company has not disputed the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the lorry and hence, the said finding of the Tribunal need not be interfered with by this Court.

7.As regards the quantum of compensation, the first respondent/claimant himself examined as P.W.2, who deposed that he was aged 40 years and was earning a sum of Rs.7,000/- per month by working as Export Executive. To substantiate the same, he produced Ex.P18 salary certificate. According to the claimant, he took treatment as inpatient in Salem Vidya Hospital as inpatient from 21.03.2003 to 30.03.2003 and thereafter, in Chennai Vijay's Nursing Home from 30.03.2003 to 1.05.2003 and Chennai Government Hospital from 10.01.2004 to 14.1.2004 and he sustained grievous injuries in the accident. P.W.3/Doctor has deposed in his evidence that the first respondent/claimant sustained eight grievous injuries, besides receiving rib bone fracture and multiple injuries in all over the body. After assessing the first respondent/claimant, the doctor issued Ex.P20-disability certificate to the tune of 50%. Exs.P8 to P10, P13, P22 and P23 are C.T.Scan reports and X-rays, which revealed that the first respondent/claimant sustained fracture and

multiple injuries. The Tribunal, after taking note of the materials and evidence adduced by the first respondent/claimant, has taken his monthly income at Rs.3,000/- (Rs.100/- per day); adopted the multiplier of 15 and permanent disability at 50%; and quantified the compensation under the head "loss of income due to disability" at Rs.2,70,000/- (36,000/- x 15 x 50/100). The Tribunal has rightly determined the income, adopted the multiplier and assessed the loss of income for the permanent disability suffered by the first respondent/claimant and hence, the same does not require any interference by this Court.

8. That apart, the Tribunal has awarded Rs.1,00,000/- towards medical charges, placing reliance on Ex.P17 medical bill, which is the actual medical expenses incurred by the first respondent/claimant and hence, the same is hereby confirmed. Further, the Tribunal has granted Rs.30,000/- towards pain and suffering, which in the opinion of this Court, is just and reasonable, taking note of the quantum of permanent disability sustained by the first respondent/claimant and hence, the same need not be interfered.

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 is directed to deposit the entire compensation amount 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 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(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The Additional District Judge cum Special Judge,
(Essential Commodities Act), Salem.

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

+lcc to Mr.N.B.Surekha , Advocate SR.No. 58979

C.M.A.No.2725 of 2006
and M.P.No.1 of 2006

A.SK(03/03/2020)