



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3072 of 2006

National Insurance Co. Ltd.,
Palaniyappa Complex,
1272-1273, Mettur Road,
Erode-638 011.

.. Appellant

Vs.

1.P.Kottaisamy
2.N.Senthil
3.T.Bhaskaran

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.06.2005 made in M.C.O.P.No.11 of 2005 on the file of the Motor Accidents Claims Tribunal Additional District Judge, (FTC), Gobichettipalayam.

For Appellant : Mr.S.Arunkumar

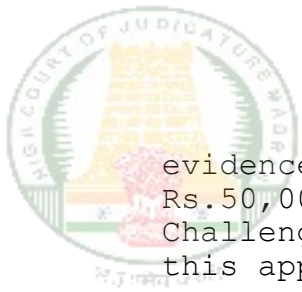
For R1 : Mr.Ma.P.Thangavel

J U D G M E N T

This appeal is preferred by the Insurance company as against the award of a sum of Rs.50,000/- towards compensation to the first respondent/claimant for the injuries sustained by him in a motor vehicle accident.

2.The case in brief is as follows:

On 09.10.2002 at about 5.30p.m, when the first respondent/claimant was going as a pillion rider in a M-80 Bajaj motorcycle bearing Regn.No.TN36 C 5227 on Nambiyur to Gobi Main Road, a mini auto bearing Regn.No.TN36 E 8561 insured with the appellant insurance company came in a rash and negligent manner and dashed against the motorcycle. Due to the said impact, the first respondent/claimant sustained grievous injuries. Stating so, he filed a claim petition claiming a compensation of Rs.3,00,000/-. After analysing the oral and documentary



evidence, the Tribunal has awarded a total compensation of Rs.50,000/- with interest at 9%pa from the date of petition. Challenging the same, the appellant insurance company has filed this appeal.

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3.The learned counsel for the appellant insurance company submitted that the Tribunal has failed to note that three persons had travelled in the motorcycle and they were under the influence of alcohol at the time of accident and they themselves invited the accident; and the Tribunal has erred in not appreciating the evidence of R.W.1 and Exs.R1 and R2. The learned counsel also submitted that the compensation of Rs.50,000/- awarded by the Tribunal is excessive and exorbitant, considering the nature of the injuries sustained by the first respondent/claimant.

4.Per contra, the learned counsel for the first respondent/claimant submitted that based on the evidence and materials adduced by the parties, the Tribunal has rightly rendered its findings on negligence and liability. He also submitted that though the claimant claimed a compensation of Rs.3,00,000/-, the Tribunal has awarded only a meagre sum of Rs.50,000/- as compensation. Hence, no interference is required in the order passed by the Tribunal.

5.Heard both sides and perused the records.

6.P.W.1/first respondent/claimant has deposed that he was a pillion rider in the Bajaj M-80 motorcycle bearing Registration No.TN36 C 5227 and while the motorcycle was nearing Palaiya Police Station, in front of Fathima Tiffin Shop, the mini auto bearing registration No.TN36 E 8561 came in a rash and negligent manner and dashed against the motorcycle; as a result of the same, the rider of the motorcycle was thrown away from the vehicle and sustained multiple injuries; the first respondent/claimant sustained fracture in right leg knee, besides receiving injuries in hand, head, chest, right foot, hip and all over the body. The testimony of P.W.1 was supported by Ex.P1-First Information Report, Ex.P2 rough sketch and Ex.P6 charge sheet, as per which, the driver of the mini auto was responsible for the accident. Though it was contended on the side of the appellant insurance company that the rider of the motorcycle rode the vehicle along with two pillion riders and they were under the influence of alcohol at the time of accident, there was no concrete material adduced to substantiate the same. In the absence of any contra evidence, the Tribunal has rightly concluded that the accident had occurred only due to the rash and negligent driving of the driver of the mini auto



and accordingly, fastened the liability on the appellant insurance company, which this Court is not inclined to interfere.

7.As far as the quantum of compensation, the Tribunal, after taking into consideration the evidence of the first respondent/claimant with regard to the nature of the injuries along with Ex.P2 wound certificate, has awarded a sum of Rs.50,000/- towards pain and suffering, which, in the opinion of this Court, cannot be said to be on the higher side and is, infact, low and hence, the same warrants no interference.

8.Finding no merit, this appeal fails and is accordingly dismissed. No costs. The appellant/Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. The first respondent/claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk /rst/rk

To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court, Gobichettipalayam.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.S.Arunkumar, Advocate SR.48191
+lcc to Mr.Ma.P.Thangavel, Advocate SR.48239

C.M.A.No.3072 of 2006

AD(CO)
CB(03/01/2020)