IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1186 of 2017
and
C.M.P.No.5935 of 2017

The Divisional Manager,
The Oriental Insurance Co.Ltd.,
Divisional Office,
6, Srinivasa Mansion
364/1, 10B, Jaya Nagar
Bangalore-560 011. ... Appellant /2nd Respondent

Vs

1.M.Nataraj ... 1st Respondent/Petitioner

2.G.Bhujendra ...2nd Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 13.04.2007 made in MCOP No.1013 of 2006 on the file of the Motor Accidents Claims Tribunal at Krishnagiri (Chief Judicial Magistrate No.2, Krishnagiri).

For Appellant : Mr.M.Rajasekhar

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.70,200/- towards compensation to the first respondent, due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On 18.09.2003, the first respondent and others were travelling in the Tempo Traveller bearing Reg.No.KA-05-D-5132 belonging to the second respondent and insured with the appellant Insurance Company, from Tiruvannamalai to Bangalore. Due to the rash and negligent driving of the driver of the tempo, when it was plying in the Krishnagiri – Tiruvannamalai Road towards Krishnagiri at about 05.30 hours, it hit behind a parked Tourist Bus bearing Reg.No.TN-49-H-1001, in the Chennai Bye-Pass Junction in Krishnagiri Town. Due to the said impact,

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the first respondent and others sustained grievous injuries. The first respondent filed a claim petition before the Tribunal, claiming a sum of Rs.1,00,000/- as total compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.70,200/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in giving a finding that the accident had occurred only due to the rash and negligent driving of the driver of the tempo traveller. He also disputed the quantum of compensation awarded by the Tribunal, stating that the same is excessive and exorbitant.

5.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

6.The first respondent was examined as P.W.1, before the Tribunal. He deposed before the Tribunal that on the date of accident at about 05.30 hours, when he was travelling in the tempo traveller in question, along with others, due to the rash and negligent driving of the driver of the tempo, it dashed against the back side of a stationed Tourist Bus. Ex.P1- First Information Report also denotes the same. Since the manner of accident put forth on the side of the claimant was not opposed by the Insurance Company before the Tribunal by filing requisite documentary evidence, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the tempo. This Court is not inclined to interfere with the said finding rendered by the Tribunal.

7.With regard to the quantum of compensation awarded by the Tribunal, the Tribunal has awarded a sum of Rs.61,200/- towards towards future loss of earning capacity. The said sum has been arrived at by taking the monthly income of the injured at Rs.6,000/- earned by way of seasonal business, adopting the multiplier of 5 and taking the disability percentage at 17% even though P.W.2-Doctor assessed the same at 18% (Rs.6,000/- x 12 months x 5 x 17/100). The Tribunal has also awarded a sum of Rs.3,500/- towards pain and suffering, Rs.3,500/- towards extra nourishment, Rs.200/- towards damages to clothes and Rs.1,800/- towards transportation expenses. The Tribunal has rightly fixed the monthly income of the injured by considering the materials and evidence adduced on record, adopted the correct multiplier and awarded Rs.61,200/- towards loss of income. The amounts awarded by the Tribunal towards other heads are also very reasonable. In view of the same, the compensation awarded by the

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Tribunal at Rs.70,200/- with interest at the rate of 7.5% per annum from the date of petition, is confirmed.

8.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal at Krishnagiri
(Chief Judicial Magistrate No.2, Krishnagiri).

+1cc to Mr.M.Raja Sekhar, Advocate, S.R.No. 78566

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