

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2759 of 2018
and C.M.P.No.20990 of 2018

Branch Manager,
New India Assurance Co. Ltd.,
Perambalur.

...Appellant/2nd Respondent

Vs.

1.James Peter

...1st Respondent/Petitioner

2.Sundarraaj

...2nd Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.10.2017 made in MCOP.No.707 of 2015 on the file the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Perambalur.

For appellant : Mr.S.Manohar

For Respondent: 2nd Respondent Dispensed with
vide Court order dated.25.06.18

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 27.10.2017 made in MCOP.No.707 of 2015 on the file the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Perambalur.

2.The appellant-Insurance Company is 2nd respondent in MCOP.No.707 of 2015 on the file the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Perambalur. The 1st respondent filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained in the accident that took place on 28.06.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent and directed the appellant-

Insurance Company as the insurer of the lorry to pay a sum of Rs.12,22,347/- as compensation to the 1st respondent/claimant.

4. Against the said award dated 27.10.2017 made in MCOP.No.707 of 2015, the appellant-Insurance Company has come out with the present appeal.

5. The learned counsel appearing for the appellant-Insurance Company contended that the 1st respondent did not possess driving license at the time of accident and the Tribunal ought to have fixed contributory negligence on the part of the 1st respondent. P.W.3-Doctor did not even conduct any scientific test or taken CT scan for ascertaining the actual condition of the 1st respondent at the time of issuing disability certificate and issued disability certificate only based on the old hospital records. The Tribunal erred in accepting 60% disability assessed by the Doctor for the fracture of hip. The Tribunal failed to see that after initial treatment, the 1st respondent did not take any continuous treatment. The 1st respondent alleged that he was doing catering work. It does not involve any physical exertion. The Tribunal erred in fixing monthly income of the 1st respondent at Rs.6,000/- per month, in the absence of any proof. The amounts awarded by the Tribunal for disability by applying multiplier method in the absence of functional disability and the total amounts awarded by the Tribunal are excessive and prayed for setting aside the award of the Tribunal.

6. Heard the learned counsel appearing for the appellant and perused the materials available on record.

7. From the materials on record, it is seen that the 1st respondent contended that the accident occurred due to rash and negligent driving by the driver of the lorry. The appellant did not examine the driver of the lorry to prove that the accident occurred due to negligence of the 1st respondent or the 1st respondent contributed negligence for the accident. The only contention of the learned counsel appearing for the appellant with regard to negligence is that the 1st respondent did not possess driving license and therefore, he contributed negligence for the accident. The same was rejected by the Tribunal based on the judgment of the Division Bench of this Court reported in 2013 (1) TN MAC 60 (DB) [Oriental Insurance Co. Ltd., Vs. T.R.Subramani (died)]. The reasoning given by the Tribunal for holding that the accident occurred only due to rash and negligent driving by the driver of the lorry is not erroneous, warranting interference by this Court.

8. As far as the quantum of compensation is concerned, the 1st respondent claimed that he was doing catering work and was earning a sum of Rs.12,000/- per month. He examined the owner of

R.R contract as P.W.4, who was doing catering and electrical contract work. He deposed that the 1st respondent was working under him and he paid a sum of Rs.15,000/- per month. They have not filed any document to that effect. The Tribunal considering the evidence and document, did not accept the same and fixed the notional income of the 1st respondent at Rs.6,000/- per month. The accident is of the year 2015. The monthly income fixed by the Tribunal is meagre. The Tribunal considering the evidence of P.W.3-Doctor and nature of injuries, disability certificate and the nature of work done by the 1st respondent, adopted multiplier method to arrive at the compensation, which is proper. The total amounts awarded by the Tribunal under different heads are not excessive warranting interference by this Court.

9.In the result, the appeal is dismissed and the compensation awarded by the Tribunal at Rs.12,22,347/- along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.707 of 2015. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

gsa

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal), जयते
Perambalur.
2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.S.Manohar, Advocate, SR.No.24562/19

C.M.A.No.2759 of 2018
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Kak (08/08/2019)