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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.3413 & 3414 of 2010
and M.P. Nos.1 & 1 of 2010

The Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Office, 13-A,
Netaji Road,
Cuddalore 607 001.

.. 2nd Respondent/Appellant in
both appeals

Vs.

1.R.Senthil .. 1st Respondent/Petitioner in
C.M.A.No.3413/2010

1.Iyyanar .. 1st Respondent/Petitioner in
C.M.A.No.3414/2010

2.S.Veerasekaran .. 2nd Respondent/Respondent in
both appeals

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree dated 20.04.2009, made in M.C.O.P. Nos.715 & 722 of 2008, on the file of the Additional District Court - II, (Motor Accident Claims Tribunal), Cuddalore.

For Appellant : Mr. Navaneethan Krishnan
for Mr. S.Arun Kumar

For Respondents: No appearance (For R2)

C O M M O N J U D G M E N T

These matters are heard through "Video Conferencing".

These Civil Miscellaneous Appeals have been filed against the common judgment and decree dated 20.04.2009, made in M.C.O.P. Nos.715 & 722 of 2008, on the file of the Additional District Court - II, (Motor Accident Claims Tribunal), Cuddalore.



2.The issue involved in both the appeals are one and the same and hence, they are disposed of by this common judgment.

3.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.Nos.715 & 722 of 2008, on the file of the Additional District Court - II, (Motor Accident Claims Tribunal), Cuddalore. The 1st respondent in both the appeals filed the said claim petitions, claiming a sum of Rs.12,00,000/- and Rs.15,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 05.01.2008.

4.According to the 1st respondent in both the appeals, on the date of accident, when they traveled as pillion riders in a Motorcycle bearing Registration No. PY-01-AG-2400, while crossing Gandhi Road, Panruti, near Pillayarkoil, the driver of the Tractor bearing Registration No. TN-32-1603 and Trailers bearing Registration Nos. TN-32-1604 and TN-31-H-5584 belonging to the 2nd respondent drove the vehicle in a rash and negligent manner and dashed on the Motorcycle in which 1st respondent in both the appeals traveled and caused the accident. In the accident, the 1st respondent in both the appeals sustained injuries and the rider of the Motorcycle died. The accident occurred due to rash and negligent driving by the driver of the Tractor - Trailers belonging to the 2nd respondent and hence, the 1st respondent in both the appeals filed the present claim petitions, claiming compensation against the 2nd respondent as owner and appellant as insurer of the offending vehicle.

5.The 2nd respondent remained exparte before the Tribunal.

6.The appellant-Insurance Company filed separate counter statements and denied all the averments made by the 1st respondent in both the appeals. According to the appellant, the 1st respondent in both the claim petitions have to prove that the Tractor bearing Registration No. TN-32-1603 and Trailers bearing Registration Nos. TN-32-1604 and TN-31-H-5584 belonging to the 2nd respondent was insured with the appellant at the time of accident, the driver of the Tractor-Trailers had valid driving license, the Tractor-Trailers had valid fitness certificate, registration certificate and permit to ply on road. The 1st respondent in both the appeals also have to prove their age, avocation and income, disability suffered and treatment taken to claim compensation. In any event, the total compensation claimed by the 1st respondent in both the appeals is excessive and prayed for dismissal of the claim petitions.

7.Before the Tribunal, the 1st respondent in both the appeals examined themselves as P.W.1 and P.W.2 respectively and examined two Doctors as P.W.3 and P.W.4 and marked 21 documents



as Exs.P1 to P21. The appellant did not let in any oral and documentary evidence.

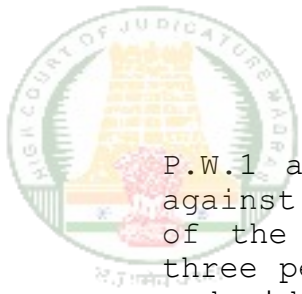
8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tractor - Trailers belonging to the 2nd respondent and directed the 2nd respondent as well as the appellant as insurer of the Tractor - Trailers to jointly and severally pay a sum of Rs.4,02,141/- and Rs.14,32,905/- as compensation to the 1st respondent in both the appeals respectively.

9.Against the said common award dated 20.04.2009, made in M.C.O.P. Nos.715 & 722 of 2008, the appellant - Insurance Company has come out with the present appeals.

10.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in relying on the evidence of interested witness viz., P.W.1 and P.W.2. The Tribunal failed to see that the 1st respondent in both the appeals did not examine any independent witness to prove their claim. Three persons traveled at the time of accident in the Motorcycle. The rider of the Motorcycle and other two pillion riders are responsible for the accident. The Tribunal erred in relying on the evidence of P.W.4 - Doctor who certified the disability of the 1st respondent in C.M.A.No.3414 of 2010 as 90%, while the certificate issued by the Government Hospital at K.K. Nagar shows his disability as 65%. The Tribunal erred in granting Rs.13,82,400/- towards 90% disability. The 1st respondent in both the appeals failed to prove their avocation and income through acceptable evidence. The 1st respondent in both the appeals are not completely disabled from doing alternate work. The monthly income fixed by the Tribunal is excessive. The total compensation awarded under different heads are excessive and prayed for setting aside the award of the Tribunal.

11.Heard the learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.

12.It is the contention of the 1st respondent in both the appeals that on the date of accident, while they were traveling as pillion riders along with one Venkatachalapathy, the driver of the Tractor-Trailers belonging to the 2nd respondent drove the same in a rash and negligent manner and dashed against the Motorcycle in which the 1st respondent in both the appeals were traveling and caused the accident. In the said accident, the rider of the Motorcycle died. The 1st respondent in both the appeals sustained grievous injuries and suffered fractures. To prove this contention, the 1st respondent examined themselves as



P.W.1 and P.W.2 and marked FIR as Ex.P1, which was registered against the driver of the Tractor-Trailers. It is the contention of the appellant that the accident has occurred only because three persons traveled in the Motorcycle at the time of accident and rider of the Motorcycle was responsible for the accident. To substantiate this contention, the appellant did not examine driver of the Tractor-Trailers or any independent witness. The Hon'ble Apex Court in the judgment reported in 2020 (3) SCC 57 [Mohammed Siddique and another Vs. National Insurance Co. Ltd.] held that three persons riding in the Motorcycle itself will not amount that they also contributed to the accident. There must be proof to show that due to rash and negligent riding by the rider of the Motorcycle with two pillion riders, the accident has occurred. In the present case, there is nothing on record to show that the rider of the Motorcycle rode the Motorcycle in a rash and negligent manner and he is responsible for the accident. Further, the 1st respondent in both the appeals have contended that the driver of the Tractor allowed two Trailers and was driving the Tractor in a rash and negligent manner. The appellant has not let in any evidence to disprove this contention. In view of the above materials, there is no error in the finding of the Tribunal that the driver of the Tractor-Trailers was negligent and responsible for the accident.

13.As far as the quantum of compensation in C.M.A.No.3413 of 2010 is concerned, the 1st respondent has contended that he was a Sculptor and was earning a sum of Rs.8,000/- per month and marked Ex.P9 - Salary Certificate to prove the same. Though the Salary Certificate reveals that the 1st respondent was earning a sum of Rs.9,000/- per month at the time of accident, the Tribunal, considering the claim of the 1st respondent, fixed a sum of Rs.8,000/- as monthly income of the 1st respondent. Considering the evidence of P.W.3-Doctor, disability certificate and nature of injuries, the Tribunal fixed the disability suffered by the 1st respondent at 75% and awarded compensation at different heads, which are not excessive warranting interference by this Court.

14.As far as the quantum of compensation in C.M.A.No.3414 of 2010 is concerned, the 1st respondent has stated that he was a Sculptor and was earning a sum of Rs.8,000/- per month. To prove the same, he has produced Ex.P17 - Salary Certificate. In view of the above claim of 1st respondent in the claim petition and in the absence of any contra evidence let in by the appellant to disprove the same, the Tribunal fixed the monthly income of the 1st respondent as Rs.8,000/- per month, which is in order. The 1st respondent has produced Ex.P10 - wound certificate, Ex.P11 - discharge summary, Ex.P12 - disability certificate issued by the Government Hospital, K.K. Nagar and Ex.P13 - disability certificate issued by the Medical Board, Cuddalore. He examined



himself as P.W.2 and examined P.W.4- Doctor. P.W.4-Doctor deposed that he examined the 1st respondent and found that the 1st respondent's right hand has been amputated and main bone from shoulder to elbow has been fractured and plates were fixed and 1st respondent cannot do any work by using his right hand and assessed his disability at 90%. There is no contra evidence to disprove the evidence of P.W.4-Doctor and to disprove the contention of the 1st respondent that he was a Sculptor before the accident and that he could not do the same work after accident. For a Sculptor, hands, especially right hand is necessary to do the work. When the right hand below the elbow was amputated and plates were fixed from shoulder to elbow, the 1st respondent cannot do the work of Sculptor and totally he lost his earning capacity. The Tribunal accepting the evidence of P.W.4-Doctor has awarded compensation, accepting the disability at 90%. There is no error in the said award of the Tribunal, warranting interference by this Court.

15. In the result, both the Civil Miscellaneous Appeals are dismissed and the amounts awarded by the Tribunal at Rs.4,02,141/- and Rs.14,32,905/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit are confirmed. The appellant-Insurance Company as well as the 2nd respondent are jointly and severally 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.Nos.715 & 722 of 2008. On such deposit, the 1st respondent in both the appeals are permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Additional District Judge - II,
(Motor Accident Claims Tribunal),
Cuddalore.



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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.34880

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C.M.A. Nos.3413 & 3414 of 2010

CNR(CO)
CB(25/08/2021)