IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.184 of 2015
and
M.P.No.1 of 2015

M/s.National Insurance Company Limited,
Branch - II, First Floor, 312,
Jawaharlal Nehru Street,
Pondicherry - 605 001. .. Appellant/3rd respondent

Vs.

1.Ammatchi ..1st Respondent/ Petitioner
2.V.Selvaraj
3.A.Saravanan .. Respondents2&3/ Respondents 1&2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.09.2013 made in M.C.O.P.No.894 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Tindivanam.

For Appellant : Mr.J.Chandran
For R1 : Mr.R.Thirugnanam
R2&R3 Not Ready in Notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 20.09.2013 made in M.C.O.P.No.894 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Tindivanam.

2.The appellant is the 3rd respondent in M.C.O.P.No.894 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Tindivanam. The 1st respondent filed the said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by her in the accident that took place on 02.04.2007.

3.According to the 1st respondent/claimant, on 02.04.2007 at about 09.00 hours, while she was travelling in a Auto on Gingee -Tindivanam National Highways Road near P.V.Polytechnic College, Vempoondi, the driver of the Auto belonging to 2nd respondent drove the same in a rash and negligent manner and capsized the Auto and caused the accident. In the said accident, the 1st respondent's left wrist amputated and sustained multiple injuries all over her body. Therefore the 1st respondent/claimant filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation against the respondents 2, 3 and appellant-Insurance Company, being the owner and insurer of the Auto.

4.The respondents 2 and 3, being the owner of the Auto remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent/claimant. According to appellant/Insurance Company, the 1st respondent did not travel in the Auto as owner of the goods and she has to prove the same. The 1st respondent/claimant has to prove that the Auto belonging to the 2nd respondent was insured with the appellant-Insurance Company and also the driver, who drove the Auto at the time of accident was possessing valid driving license. The 1st respondent/claimant has to prove that the 2nd respondent's Auto was having valid permit and fitness certificate at the time of accident. The Auto is a Light Motor Vehicle goods vehicle (Minidor Pickup vehicle), which is permitted to use for the purpose of carrying goods. As per permit condition, no person is allowed to travel in the vehicle, except the driver and cleaner. The 1st respondent and 3 other persons have travelled in the Auto as unauthorized passengers in violation of permit and policy condition. Therefore, the appellant-Insurance Company is not liable to pay any compensation to the 1st respondent/claimant. The 1st respondent has to prove her age, avocation and income by producing valid documents. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, on behalf of the 1st respondent/claimant, the 1st respondent examined herself as P.W.1 and Dr.Sekar was examined as P.W.2, 8 documents were marked as Exs.P1 to P8 and X-Ray was marked as Ex.W.O.1. On behalf of the appellant-Insurance Company, one Elumalai, who is the Junior Assistant of the appellant-Insurance Company was examined as R.W.1 and copy of the Insurance Policy was marked as Ex.R1.

7.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 Auto belonging to the 2nd respondent and directed the appellant-Insurance Company, being the insurer of the Auto to pay a sum of Rs.1,62,000/- as compensation to the 1st respondent/claimant.

8.Challenging the said award dated 20.09.2013 made in M.C.O.P.No.894 of 2007, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to see that the 1st respondent/claimant travelled in the goods auto as a gratuitous passenger in violation of Act and Rules. The Tribunal erred in accepting Ex.P8/receipt produced by the 1st respondent for having purchased flowers. The Tribunal failed to see that the said receipt was created for the purpose of getting compensation from the appellant-Insurance Company. The Tribunal ought to have disbelieved the evidence of P.W.2/Doctor. The Tribunal failed to see that the percentage of disability certified by P.W.2/Doctor is excessive and 1st respondent failed to produce the Accident Register, wound certificate, old X-Rays, medical prescription and continuous medical treatment till assessment of disability. In any event, the total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent/claimant contended that the 1st respondent travelled in the goods Auto along with flower baskets as owner of the goods. The 1st respondent has produced Ex.P8 and proved that she purchased flowers and travelled in the goods Auto as owner of the goods. The 1st respondent sustained multiple injuries and her left hand was amputated. The 1st respondent by examining P.W.2/Doctor and producing Medical Records, proved the nature of injuries and percentage of disability suffered by her. The 1st respondent is a flower vendor and due to the injuries, she could not able to continue the work as she was doing earlier. The Tribunal considering all the materials on record in proper perspective granted compensation, which is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the 1st respondent/claimant and perused the entire materials on record.

12.It is the contention of the 1st respondent/claimant that she is a flower vendor and travelled in the offending vehicle along with flower baskets as owner of the goods. To substantiate the said contention, she produced Ex.P8/purchase receipt and examined herself as P.W.1 and deposed to that effect. The appellant-Insurance Company except contending that the 1st respondent travelled as unauthorized passenger, has not let in any evidence to substantiate the same. However, R.W.1, official of the appellant-Insurance Company has admitted that owner of the Auto paid extra premium to cover the liability of 3 more passengers in the vehicle other than driver and cleaner. The Tribunal considering the evidence of P.W.1, R.W.1 and Ex.P8, held that the 1st respondent travelled in the Auto along with flower baskets as owner of the goods and therefore appellant-Insurance Company is liable to pay the compensation. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, the 1st respondent/claimant contended that she is a flower vendor and was earning a sum of Rs.5,000/- per month. She failed to substantiate the said contention. In the absence of material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the 1st respondent. The accident occurred in the year 2007 and the monthly income fixed by the Tribunal is not meagre. The 1st respondent examined P.W.2/Doctor to prove the nature of injuries and disability suffered by her. P.W.2/Doctor examined the 1st respondent and certified that she suffered 40% disability and also deposed to that effect. The appellant-Insurance Company has not produced any contra evidence to the evidence of P.W.2/Doctor. The Tribunal accepting the evidence of P.W.2/Doctor and disability certificate, awarded compensation on percentage basis by fixing a sum of Rs.1,500/- per percentage of disability. The total compensation awarded by the Tribunal under different heads are just compensation and are not excessive warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.1,62,000/- awarded by the Tribunal as compensation to the 1st respondent/claimant, 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.894 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Tindivanam. On such deposit, the 1st respondent is 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. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Tindivanam.

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

+1cc to Mr.R.Thirugnanam , Advocate SR.No. 7076
+1cc to Mr.J.Chandara , Advocate SR.No. 7777

A.SK(02/09/2020)