

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2554 of 2013

M/s.National Insurance Co. Ltd.,
74-A, Paramathi Road,
Namakkal Town & District. .. Appellant /II Respondent

Vs.

1.Thiru.S.Muthu ...Respondent I/Petitioner
2.Miss.S.Parameswari .. Respondent II/Respondent I

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.09.2011 made in M.C.O.P.No.55 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal District (before the Sub Court, M.C.O.P.No.118 of 2002).

For Appellant :Mr.J.Chandran

For R1 :Mr.MA.P.Thangavel

For R2 :No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 08.09.2011 made in M.C.O.P.No.55 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal District (before the Sub Court, M.C.O.P.No.118 of 2002).

2.The appellant is the second respondent in M.C.O.P.No.55 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal. The first respondent filed the above said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in an accident that took place on 25.11.2001.

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3.The case of the claimant is that, on 25.11.2001 at 23.40 hours, the first respondent was travelling in a 407 Tempo Van, bearing Registration No.TN 49/Z 8647, as the owner of the load near by Mutharasanallur bus stop on Trichy to Karur main road. At that time, the driver of the tempo van in which the first respondent has travelling, drove the Tempo Van in a rash and negligent manner, without observing the traffic rules and dashed against a parked lorry bearing registration No.TN 28/C 1618 and caused the accident. Due to the said impact, the first respondent sustained grievous injuries all over his body.

4.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 407 Tempo Van and directed the appellant-Insurance Company to pay a sum of Rs.1,29,520/- as compensation to the first respondent herein/claimant, on behalf of the second respondent.

5.Challenging the said award dated 08.09.2011 made in M.C.O.P.No.55 of 2009, the appellant / insurance company has come out with the present appeal.

6.The learned counsel appearing for the appellant-Insurance Company contended that the compensation awarded in a case of injury is highly excessive and unsustainable in law, that the Tribunal erred in holding that the accident occurred due to the rash and negligent driving of the driver of the van, that the Tribunal considering the pleading of rashness and negligence against the lorry bearing Regn. No.TN-26-C-1618 in the counter ought to have reduced 50% towards non-joinder of the necessary parties. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal.

7.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused entire materials on record.

8.From the materials on record, this Court finds that P.W.2 / Doctor has not only assessed the disability of the claimant/injured but also gave treatment to him. It is seen from his evidence that external fixator has been fixed in the left leg of the claimant/injured and SSG was done. Moreover, the claimant/first respondent has underwent treatment under P.W.2/doctor for a period of 58 days from 06.12.2001 to 01.02.2001 as inpatient. Due to the injuries and fracture, claimant/first respondent is unable to bend his knee, squat, climb the stair and assessed the disability at 25%.

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9.Though several grounds have been raised by the appellant herein/insurance company, I do not find any merit in it, in the list of the evidence of P.W.2/Doctor and the injuries sustained by the claimant.

10.The Tribunal, considering the oral and documentary evidence, has arrived at a just and reasonable compensation, which does not call for any interference by this Court and the same deserves to be confirmed.

11.In the result, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is hereby 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. On such deposit, the first respondent is permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Namakkal.

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

+1cc to Mr.Thangavel, Advocate SR.3792
+1cc to Mr.Chandran, Advocate SR.3807

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