IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.11.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2629 of 2013 &
M.P.No.1 of 2013

1.The Divisional Manager,
M/s.National Insurance Co. Ltd.,
62-A, J.N.Street,
Puducherry. ... Appellant/Respondent 2

vs.

1.Dhanusu ... Respondent 1 / Appellant
2.Karunaharan ... Respondent 2 /Respondent 1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.02.2013 and made in MACTOP.No.1370 of 2004 on the file of the Motor Accident Claims Tribunal (PSJ) at Puducherry.

For Appellant : Mr.S.Vadivel
For Respondents : No appearance

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This Appeal has been filed by the Insurance company challenging the impugned award dated 05.02.2013 passed by the Motor Accident Claims Tribunal (Principal Sub Judge, Puducherry) in MCOP.No.1370 of 2004.

2. Heard Mr.S.Vadivel, learned counsel for the Appellant. Despite service of notice on the respondents, there is no representation on their side.

3. The Appellant insurance company has challenged the impugned award on the following grounds namely:

(a) they are not liable to compensate the claim, since the involvement of the insured vehicle has not been established by the first respondent/claimant before the Tribunal. It is also their contention that there was a delay in registering the FIR and therefore, they are not liable to compensate the claim.

(b) the quantum of compensation awarded by the Tribunal is excessive.

4. Before the Tribunal, the first respondent/claimant has filed 16 documents which were marked as Ex.P1 to Ex.P16 and two witnesses were examined namely the first respondent/claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the second respondent/ Insurance Company, neither any document was filed nor any witness examined before the Tribunal.

5. Admittedly, the FIR has been registered only against the driver of the vehicle which is insured with the Appellant though belatedly. Eventhough the Appellant/insurance company has doubted the involvement of the vehicle in the accident, no evidence has been produced by them before the Tribunal to disprove the contention of the first respondent/claimant that the insured vehicle was responsible for the cause of the accident which resulted in the first respondent/claimant sustaining injuries. When the FIR is starring at the face of the Appellant and when no contra evidence has been produced to disprove the contention of the FIR, the Tribunal has rightly held the Appellant/Insurance company liable to compensate the claim of the first respondent/claimant. Any adjudication of claim by the Motor Accident Claims Tribunal is based on Preponderance of probability. From the evidence available on record, the preponderance of probability is that the Appellant/insurance company is liable to compensate the claim of the first respondent/claimant. Therefore, the first contention raised by the Appellant /insurance company with regard to its liability is rejected by this Court.

6. Insofar as the second contention raised by the Appellant/insurance company that the quantum of compensation awarded by the Tribunal is excessive is concerned, the same is also rejected by this Court for the following reasons:

(a) the first respondent/claimant sustained grievous injuries including fracture of right leg and laceration all over his body as a result of the accident.

(b) the Doctor has assessed the disability of the first respondent/claimant at 45%, as seen from the disability certificate Ex.P14. However, the Tribunal after considering the nature of the injuries sustained by the first respondent/claimant and after giving due consideration to the disability certificate (Ex.P4) has come to the conclusion that the assessment of disability by the Doctor at 45% is on the higher side and it has to be reduced to 25%. This Court has also perused and examined the basis for said reduction by the Tribunal and is of the considered view that the assessment made by the Tribunal with regard to the first respondent's/claimant's disability is a correct assessment. The Tribunal has awarded Rs.50,000/- as compensation towards disability compensation to the first respondent/claimant calculated at Rs.2,000/- per percentage of disability for 25% disability assessed by the Tribunal, which is the correct assessment.

(c) The Tribunal has also awarded Rs.20,000/- towards mental agony and pain and suffering, Rs.8,000/- towards medical expenses as per Ex.P13, Rs.52,000/- towards loss of income for a period of four months calculated at Rs.13,000/- per month, Rs.5,000/- towards extra nourishment and Rs.5,000/- towards transportation in all amounting to Rs.1,40,000/-.

(d) Considering the year of the accident and the nature of avocation of the first respondent/claimant, the compensation awarded by the Tribunal under the aforesaid heads cannot be considered to be excessive as alleged by the Appellant. Hence, the same is rejected by this Court. Therefore, the Appeal does not deserve any merit.

Conclusion:

7. In the result, this appeal is dismissed. However, the rate of interest fixed by the Tribunal at 7.4% is confirmed. The Appellant as well as the second respondent are jointly and severally directed to deposit the modified award amount together with interest and costs after deducting the amount already deposited if any to the credit of MCOP.No.1370 of 2004 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest lying to the credit of MCOP.No.1370 of 2004 to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Nl

To

1.The Principal Sub Judge,
Motor Accident Claims Tribunal,
Pondicherry.

Copy To

The Section Officer,
VR Section, High Court, Chennai.

+1cc to Mr.S.Vadivel, Advocate, S.R.No. 29805

C.M.A.No.2629 of 2013

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