

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2747 of 2013
and M.P.No.1 of 2013

National Insurance Co. Ltd.,
No.29, Pulla Avenue, Aminjikarai,
Chennai - 600 050.Appellant/2nd Respondent

vs.

1.B.Arifa BanuIst Respondent/Petitioner

2.S.V.Kumar (Auto Owner)

3.J.John Rosters (Maruthi Van Owner)
...Respondents 2 & 3/Respondents 1 & 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.01.2012 and made in M.C.O.P.No.1507/2007 on the file of the Motor Accident Claims Tribunal, Chennai (In the III Court of Small Causes, Chennai)

For Appellant : Mr.S.Vadivel

For Respondents : Mr.N.Sreenivasalu for R1

Batta with petition due reg. R2 & R3

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Appellant Insurance Company challenging the Award dated 31.01.2012 passed by the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai, in M.C.O.P.No.1507 of 2007.

2.Heard Mr.S.Vadivel, learned counsel for the Appellant and Mr.N.Sreenivasalu, learned counsel for the first respondent.

3.The first respondent sustained injuries on 13.08.2002 as a result of an accident caused by two vehicles. One an Auto in

which the first respondent was travelling and another opposite vehicle namely Maruthi Van. Auto is owned by the second respondent and insured with the Appellant. Maruthi Van is owned by the third respondent.

4.The first respondent/claimant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.1507 of 2007 seeking compensation.

5.The Motor Accident Claims Tribunal under the impugned Award fixed the contributory negligence on the part of the driver of the Auto insured with the Appellant at 25% and fixed the contributory negligence on the part of the driver of Maruthi Van owned by the third respondent at 75% and has awarded a total compensation of Rs.2,68,000/- to the first respondent together with interest and cost.

6.The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Loss of income for 4 months	-	Rs. 14,000/-
Transportation	-	Rs. 5,000/-
Extra nourishment	-	Rs. 5,000/-
Damage to clothes	-	Rs. 500/-
Medical expenses	-	Rs.1,53,500/-
Pain and suffering	-	Rs. 10,000/-
Disability of 40% at the rate of Rs.2,000/- per disability	-	Rs. 80,000/-
Total		Rs.2,68,000/-

7.In this appeal, the Appellant Insurance Company has not challenged the quantum of compensation awarded by the Tribunal and has challenged only the finding of the Tribunal fixing 25% contributory negligence on the part of the driver of the Auto insured with the Appellant.

8.Admittedly, it was a head on collision between an Auto in which the first respondent/claimant was travelling and Maruthi Van which was coming from the opposite direction. Being a head on collision, based on the oral evidence adduced by the respective parties, though the FIR (Ex.P1) has been registered only against the driver of Maruthi Van owned by the third respondent, the Tribunal has come to the conclusion that both the drivers are at fault and there is contributory negligence on both of them. Accordingly, based on the oral evidence adduced by the respective parties, the Tribunal has rightly fixed 25% contributory negligence on the part of the driver of Auto insured with the Appellant and has also fixed 75% contributory

negligence on the part of the driver of Maruthi Van owned by the third respondent.

9.This Court has perused and examined the materials and evidence available on record and is in agreement with the findings rendered by the Tribunal.

10.For the foregoing reasons, this Court is of the considered view that there is no merit in this appeal.

11.Accordingly, the appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit 25% amount and the third respondent is directed to deposit 75% amount awarded by the Tribunal, after deducting the amount already deposited if any, together with interest at the rate of 7.5% from the date of the claim till the date of realization to the credit of M.C.O.P.No.1507 of 2007, on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai, 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 M.C.O.P.No.1507 of 2007 to the bank account of first respondent/claimant, through RTGS, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

pam
To

1.The III Judge
Motor Accidents Claims Tribunal,
III Court of Small Causes, Chennai.

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

+1cc to Mr.S.Vadivel, Advocate Sr.29806

C.M.A.No.2747 of 2013

br[co]
srg 04/05/2021