

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.747 of 2012
& M.P.No.1 of 2012

The Divisional Manager,
National Insurance Company Limited,
J.N.Street, Pondicherry ... Appellant/2nd Respondent

...vs...

1. Amudhalakshmi ... Respondent/Petitioner
2. Jagadeesan ...2nd Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and Judgment passed in M.A.C.T.O.P.No.1280 of 2007 dated 22.09.2011 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, III Additional District Judge (FAC) Pondicherry.

For Appellant : Mrs. N.B. Surekha

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company to set aside the decree and Judgment passed in M.C.O.P.No.1280 of 2007 dated 22.09.2011 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, III Additional District Judge (FAC) Pondicherry.

2. The brief facts of the case is as follows:

On 30.10.2007 at about 06:30 a.m when the first respondent was standing on the Villupuram main Road, opposite to Annai Theresa Anbu Nilayam, Reddiarpalayam, Puducherry to cross the road a motorcycle bearing Reg.No.PY-01-AA-630, ridden by its rider(second respondent herein) at a great speed in a rash and negligent manner and dashed against the first respondent. Due to the accident the first respondent sustained fracture of inferior and medial wall of orbit right side, suturing of right upper lip and lower lip, maxillary haemosinus, decreasing periobital edema, lacerated wound over the right eye and below right eye, right cheek, fracture of nasal bone, lacerated wound over right hip, right leg and right hand. The accident occurred due to the rash and negligence riding of the two wheeler by the second respondent. hence, the claimant filed a claim petition before the Tribunal

seeking Rs.7,00,000/- as compensation. The Tribunal after analysing the materials on record awarded Rs.58,200/- as compensation with 7.5% p.a from the date of petition till the date of deposit.

3.Challenging the same the Appellant/Insurance Company has come up with this appeal.

4.The learned counsel for the appellant/ Insurance Company would contend that the first respondent failed to follow the traffic rules while crossing the road and thus contributed herself to the said accident. He would further contend that the rider of the motor cycle does not possess valid driving licence at the time of accident.

5.Despite ordering notice on the respondents through Court, and privately the respondents are not served till now and hence considering the paucity of time, the appeal itself is taken up for final disposal, since the disposal of this case will not affect the respondents in any manner.

6.On a perusal of the award passed by the Tribunal, with regard to negligence aspect, P.W.1 in her evidence stated that the rash and negligence riding of the two wheeler is the cause for the accident. Ex.P.1/F.I.R also corroborates with the deposition of P.W.1. Even though the learned counsel for the appellant/Insurance company argued that the claimant failed to follow the traffic rules while crossing the road and thus contributed herself to the said accident. The said contention was not proved, as the rider of the motor cycle has not been examined. Based on the available evidences on record the Tribunal concluded that the rider of the two wheeler is the cause for the accident. The findings of the Tribunal is perfectly valid in the eye of law and no interference is required and the same is confirmed as such.

7.With regard to quantum the Tribunal based upon the disability certificate/Ex.P.11, which shows that the claimant had sustained 20% disability and determined Rs.1,500/- per percentage and thereby quantified Rs.30,000/- as compensation towards the head disability. Apart from this considering medical records of the claimant the Tribunal has awarded Rs.10,000/-,Rs.3,200/- and Rs.4,000/- towards mental agony (pain and sufferings), Medical expenses and Extra nourishment. In the claim petition it has been stated that the claimant is working in a private concern, but there is no documentary evidence to substantiate the same hence Rs.5,000/- is awarded towards loss of income. Apart from this Rs.4,000 and Rs.2,000/- is awarded towards Transportation and damage to clothes. Thus, the total amount was quantified as Rs.58,200/-

8. This Court is of the opinion that the compensation awarded under all the heads by the Tribunal are reasonable, weight of evidence and based on settled principles and

therefore, there is no ground to interfere with the judgment passed by the Tribunal below. Further, the grounds taken by the Insurance Company on the point of liability cannot be raised at this stage and therefore, it cannot be accepted at this distant point of time. Therefore, the grounds raised by the Insurance Company are liable to be rejected and they are rejected accordingly. The compensation awarded by the Tribunal is just, fair and reasonable.

9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant / Insurance Company shall deposit the entire compensation amount, along with interests and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit, the claimant/first respondent is permitted to withdraw the same, on making proper application before the Tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn

To

1. The II Additional District Judge,
III Additional District Judge (FAC)
Pondicherry.
2. The Section Officer,
V.R.Section, Madras High Court,
Chennai 104

+1cc to Mr.N.B.Surekha, Advocate, S.R.No. 11737

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C.M.A.No.747 of 2012
& MP No.1 of 2012

BR(CO)
GN(10/12/2020)