



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.92 of 2013
and M.P. No.1 of 2013

National Insurance Co. Ltd.,
No.751, Mount Road,
III Floor, Chennai 2.

.. Appellant/2nd Respondent

Vs.

1.A. Gopal

.. 1st Respondent/Claimant

2.D. Jayaraman

.. 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.01.2008, made in M.C.O.P. No.2428 of 2002, on the file of the III Court of Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.S.Arunkumar

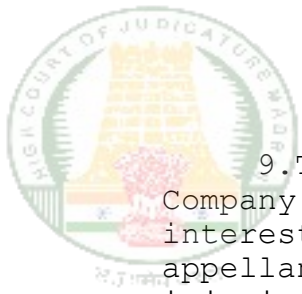
For Respondents : Mr.R.Kishore (For R1)
for M/s.Ramya V. Rao
No appearance (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 25.01.2008, made in M.C.O.P. No.2428 of 2002, on the file of the III Court of Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the 2nd respondent in M.C.O.P. No.2428 of 2002, on the file of the III Court of Small Causes Court, (Motor Accident Claims Tribunal), Chennai. The 1st respondent/claimant filed the said claim petition, claiming a



9. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in relying on the interested testimony of P.W.1 and P.W.4 and directed the appellant to pay, holding that the 1st respondent sustained injuries in the road accident while traveling in the Auto. The reason for delay in lodging complaint and suppression of manner of accident before the Doctor is not acceptable. The Tribunal failed to consider that documentary evidence is contrary to the pleadings and erred in relying on the judgment of the Criminal Court. The learned counsel appearing for the appellant further contended that without there being any foul play, there is no reason for the 1st respondent to give letter to withdraw the claim petition. The Tribunal ought to have dismissed the claim petition, relying on the evidence of P.W.1 and Exs.R1 to R5. The Tribunal erred in granting huge amount of Rs.87,000/- as compensation. The learned counsel appearing for the appellant contended that the Tribunal erred in awarding 12% interest, contrary to the judgments of Honb'ble Apex Court and Reserve Bank of India Guidelines and prayed for allowing the appeal.

10. The learned counsel appearing for the 1st respondent made submissions in support of the award passed by the Tribunal and submitted that 12% interest awarded by the Tribunal 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 1st respondent and perused the materials available on record.

12. From the materials available on record, it is seen that it is the contention of the 1st respondent that while he was traveling in the Auto belonging to the 2nd respondent, the driver of the Auto drove the same in a rash and negligent manner and dashed against the stationary Lorry and caused accident. In the accident, the 1st respondent sustained injuries and filed claim petition, claiming compensation for the injuries. To substantiate his contention, the 1st respondent examined himself as P.W.1, Head Constable as P.W.2 and his elder sister who is wife of the Auto driver as P.W.4 and marked FIR as Ex.P2 and charge sheet laid against the driver of the Auto as Ex.P3. According to the 1st respondent, driver of the Auto pleaded guilty and paid fine. On the other hand, it is the contention of the appellant that accident did not occur as alleged by the appellant. The 1st respondent did not travel in the Auto and was not injured in the accident as alleged by him. The learned counsel appearing for the appellant relied on Exs.R1 and R2 - accident register copies, wherein it has been stated that the 1st respondent fell down from the height of 15 feet and got injured. The appellant also relied on Ex.R3 - letter given by the counsel for the 1st respondent for withdrawing the claim petition. P.W.4



- wife of the Auto driver and sister of the 1st respondent has deposed that fearing that action would be taken against her husband by the Police, she gave statement before the Doctors that the 1st respondent fell down from the height of 15 feet. It is not in dispute that driver of the Auto is brother in law of the 1st respondent and Auto belongs to his uncle. The deposition of P.W.4 explaining the reason for giving statement before the Doctor are acceptable. The FIR was registered against the driver of the Auto and he pleaded guilty and paid fine. It is no doubt true that based on the criminal proceedings and judgment in Criminal Court, negligence cannot be fixed, but the said judgment can be considered along with other evidences placed before the Tribunal and the Tribunal came to the conclusion to fix the negligence. The Tribunal considering the evidence let in by the 1st respondent as P.W.1, P.W.2 to P.W.4, the documents relied on by the 1st respondent and in the absence of any complaint given by the appellant to CBCID and CBI, alleging that the 1st respondent is making false claim, held that accident has occurred only due to rash and negligent driving by the driver of the Auto and 1st respondent sustained injuries in the said accident. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as the reliance placed on the learned counsel appearing for the appellant on Ex.R3 - letter given by the counsel for the 1st respondent for withdrawing the claim petition is concerned, it is the contention of the 1st respondent that without his consent, his earlier counsel has given such letter. In any event, the 1st respondent has not filed any memo before the Tribunal for withdrawing the claim petition, but continued prosecuting his claim. In view of the same, considering the evidence of P.W.1, P.W.2, P.W.3-Doctor, nature of injuries sustained by the 1st respondent and treatment taken by him, the Tribunal awarded a sum of Rs.87,000/- as compensation, which is not excessive. The Tribunal has granted compensation along with interest at the rate of 12% per annum, which is excessive and contrary to the Reserve Bank of India guidelines and judgment of the Hon'ble Apex Court. In view of the same, the interest awarded by the Tribunal at the rate of 12% per annum is reduced to 7.5% per annum.

14.In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.87,000/- is awarded together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, 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.2428 of 2002 at the first instance and recover the same from the 2nd respondent. On such deposit, the 1st



respondent is permitted to withdraw the award amount with along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The III Judge,
Court of Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

+lcc to Mr.S.Arunkumar, Advocate, S.R.No.40457

C.M.A. No.92 of 2013

LN(CO)
GMV(07/09/2021)