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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.3.2021

CORAM :

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CIVIL MISCELLANEOUS APPEAL NO.1203 OF 2013

S.Pandian

...Claimant / Appellant

..Vs..

1.N.Sivaseelan

2.A.Nagarajan

3.The National Insurance Company Ltd.,
Branch Office, No.16, State Bank road,
Coimbatore - 641 018. ...Respondents / Respondents

(R1 remained exparte before the Tribunal
Hence notice to R1 may be dispensed with)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 9.11.2012 made in M.C.O.P.No.292 of 2009 on the file of I Additional District Court (Motor Accidents Claims Tribunal), Erode.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondent No.3 : Mr.K.Padmanabhan

R1 & R2 : Remained exparte in Lower Court

JUDGMENT

Brief facts of the claimant's case is as follows:

It is the case of the claimant that on 21.01.2009 at about 2.30 p.m, the 1st Respondent herein being the driver of the Motor Cycle bearing no. Tn-37-AY-5387, owned by the the 2nd Respondent herein and insured with the 3rd Respondent/Insurance Company, drove the above said motor cycle at a high speed in rash and negligent manner proceeding from east to west direction towards on the Thondamuthu road in Vadavalli and dashed against the Claimant/Appellant near Indira Nagar at the extreme northern side of the road. The Claimant/ Appellant was coming from the



opposite side, pushing his broken down Motor Cycle bearing no. TN-38-AS-0320 along his extreme left side of the road to the nearby workshop. Due to the accident, the claimant sustained grievous injuries. The Claimant/Appellant filed a claim petition before the tribunal, claiming compensation of Rs.3,25,000/- for the Permanent disability sustained by the claimant/Appellant in the said accident.

2. On the side of the claimant, P.W.1 and P.W.2, the Petitioner and Dr. Periyasamy respectively were examined and Ex.P1 to P12 and M.O.1 were marked. On the side of the respondents, R.W.1 to 3 were examined and Ex.R1 to R6 were marked.

3. The Tribunal, based on the oral and documentary evidence, has held that the 2nd respondent therein being the owner of the offending vehicle is liable to pay compensation to the claimant and awarded Rs.63,000/- as compensation along with interest at the rate of 7.5% p.a from the date of petition till realization. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Amount in Rs.
Transport to hospital	10,000/-
Extra Nourishment	10,000/-
Pain and suffering	10,000/-
Permanent disability	33,000/-
Total :	63,000/-

4. Heard the learned counsel appearing for the claimant/appellant, the learned counsel appearing for the respondent/Insurance Company and perused the materials available on record.

5. The tribunal has absolved the liability against the Insurance Company and held that the owner of the vehicle is liable to pay compensation to the claimant/appellant. The owner of the vehicle viz., the second respondent herein remained exparte before the tribunal. Therefore, the learned counsel appearing for the appellant seeks notice to the second respondent be dispensed with. The request of the counsel appearing for the appellant is accepted and accordingly, notice to the owner of the vehicle, viz., second respondent herein is dispensed with.

6. Though the appeal is filed seeking enhancement of compensation, the learned counsel appearing for the appellant did not insist for enhancement of compensation, but seeks



direction to the Insurance Company to pay compensation to the appellant and recover the said amount from the owner of the vehicle as per the decision of the Hon'ble Supreme Court in the case of ORIENTAL INSURANCE CO. LTD. VS. SHRI NANJAPPAN AND OTHERS [Appeal (Civil) No.1012 o 2004, dated 13.2.2004]. Therefore, the award insofar as the quantum of compensation is confirmed.

7. In view of the submission made by the learned counsel appearing for the claimant/appellant not pressing the relief of enhancement of compensation, the learned counsel appearing for the third respondent/Insurance Company also fairly agreed to pay compensation to the claimant and recover the said amount from the owner of the vehicle as per the guidelines laid down by the Hon'ble Supreme Court in NANJAPPAN case cited supra. Insofar as the liability is concerned, following the decision of the Hon'ble Supreme Court cited supra, the third respondent/Insurance Company is directed to pay compensation awarded by the tribunal to the appellant and recover the said amount from the owner of the vehicle as per the guidelines laid down by the Hon'ble Supreme Court in the aforesaid case.

8. Accordingly, the third respondent/Insurance Company is directed to deposit the award amount before the tribunal within a period of six weeks from the date of receipt of copy of the judgment, less the amount if any already deposited before the tribunal. No appeal has been preferred by the owner of the vehicle challenging the award passed by the tribunal.

9. In fine, the Civil Miscellaneous Appeal is partly allowed to the aforesaid extent. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The 1st Additional District Court
(Motor Accident Claims Tribunal),
Erode.

2.The National Insurance Co. Ltd.,
Branch office,
No.16, State Bank Road,
Coimbatore - 641018.



3.The Section Officer,
V.R.Section,
Madras High Court, Chennai-104.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.17090

Civil Miscellaneous Appeal
No.1203 of 2013

SPD (CO)
RVM(15/11/2021)