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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.Nos.2873 of 2011 & 118 of 2010
and
MP.No.1 of 2010

CMA.No.2873 of 2011

Narahari

... Appellant/Petitioner

Versus

1. Kumarasankar

2. National Insurance Co. Ltd.,
Divisional Office-1, 2nd Floor,
L.R.N.complex, Saradha College Road,
Salem-7
(1st respondent set exparte)

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree passed by the Motor Accident Claims Tribunal, Additional District Judge and Special Judge, E.C.Act, Salem dated 13.10.2009 made in MCOP.No.1401 of 2003.

For Appellant : Mr.K.Kuppusamy

For R2 : Mr.D.Bhaskaran

R1 : Exparte

CMA.No.118 of 2010

National Insurance Co. Ltd.,
Divisional Office-1, 2nd Floor,
L.R.N.complex, Saradha College Road,
Salem

... Appellant/2nd Respondent

Versus



1.K.Narahari

2.P.Kumarasankar

... Respondent/Petitioner & 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 13.10.2009 made in M.C.O.P.No.1401 of 2003 on the file of the Motor Accidents Claims Tribunal (Additional District Court and Special Court (Essential Commodities Act), Salem.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.K.Kuppusamy

R2 : No appearance

COMMON JUDGMENT

These appeals have been laid as against the award and decree passed by the Motor Accident Claims Tribunal, Additional District and Special Judge, E.C.Act, Salem dated 13.10.2009 made in MCOP.No.1401 of 2003.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. In CMA.No.2873 of 2011, the case of the claimant is that on 16.07.2003, when he was riding his motorcycle with pillion rider, the lorry owned by the first respondent driven by its driver, while overtaking the claimant and without giving any signal, all of sudden stopped the lorry. Therefore, the claimant who was going behind the lorry hit the lorry and sustained injuries. Immediately he was taken to hospital for taking treatment. Therefore, the claimant filed claim petition seeking compensation at Rs.5,00,000/-.

4. Resisting the same, the insurance company filed counter stating that the accident took place only due to the negligence of the claimant and as such the insurance company is not held to be liable for any compensation and sought for dismissal of the claim petition.

5. On the side of the claimant, examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.13. On the side of the respondents



they examined R.W.1 and marked Ex.R.1. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal fastened negligence on the part of the driver of the first respondent and respondents are directed to pay the compensation jointly and severally. Aggrieved by the same, both the claimant as well as the insurance company filed these appeals for enhancement of award amount as well as challenging the negligence.

6. The learned counsel appearing for the claimant submits that the claimant sustained injuries on his face and he lost his two teeth. He was admitted as inpatient from 16.07.2003 to 01.08.2003. Even after discharge from the hospital, he was taking treatment as out patient in various hospitals. Even though, the Tribunal awarded only very meager compensation. Therefore, he prayed for enhancement of the award amount.

7. Per contra, the learned counsel appearing for the insurance company would submit that the Tribunal ought to have seen that the Ex.Pl, FIR which was registered on the complaint lodged by the driver of the vehicle owned by the first respondent against the claimant. The accident took place only on the rash and negligent driving of the claimant and he without maintaining distance between two vehicles, he himself hit the lorry and sustained injuries. Therefore, he is the tort feaser and he is not entitled for any claim. Motor Vehicle Inspection Report also revealed that the rear right hand side of the brake light and indicator were damaged due to the two wheeler was driven by the claimant hit on the right hand of the lorry. If the stand taken by the claimant is taken into consideration, while lorry was overtaking him without signaling turned left hand side and stopped vehicle, if at all the lorry stopped while overtaking him, the claimant would have hit the left hand side of the brake light and indicator of the lorry. Therefore, the accident took place only on the rash and negligent driving of the claimant and he is not entitled for any compensation.

8. Heard Mr.K.Kuppusamy, learned counsel appearing for the claimant and Mr.D.Bhaskaran, learned counsel appearing for the insurance company.

9. According to the claimant, when the lorry which was driven by its driver owned by the first respondent, by overtaking the two wheeler without signaling, he suddenly applied brake and as such the claimant hit the lorry, due to which he sustained grievous injuries. Though on the complaint lodged by the driver of the lorry, FIR was registered as against the claimant, the Inspector of Police who investigated the crime filed charge sheet as against the driver of the lorry. The



driver of the lorry admitted his guilt and also paid fine. That apart, on perusal of the FIR in Cr.No.383 of 2003 registered under Sections 279 and 338 of IPC revealed that when the lorry was proceeding to Madurai near Kandhampatti Flyover, a bus was trying to overtake the lorry and as such the lorry driver stopped the lorry on the left hand side of the road. After stopping the lorry, the claimant hit the lorry on its behind and sustained injuries. Therefore, there are controversial version in the FIR, charge sheet and also statement of the claimant. However, the vehicle owned by the first respondent was duly registered with the second respondent and as such the Tribunal rightly fixed liability on the insurance company and the owner of the vehicle and they were directed to pay compensation.

10. Insofar as quantum of compensation is concerned, the Tribunal rightly awarded just and fair compensation for injuries sustained by the claimant and it does not require any enhancement by this Court.

11. Accordingly, in both the civil miscellaneous appeals, the following orders are passed:-

(i) The insurance company and the owner of the vehicle are directed to deposit the total compensation of Rs.1,92,450/- with accrued interest and costs as determined at by the Tribunal jointly and severally, within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited.

(ii) On such deposit, the claimant is permitted to withdraw the same in accordance with law, less the amount if any already withdrawn by him.

With the above directions, these Civil Miscellaneous Appeals are dismissed. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Additional District and Special Judge,
E.C.Act, Salem

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C.M.A.Nos.2873 of 2011 & 118 of 2010

GPL(CO)
SU(25/10/2021)