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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.12.2020

Delivered on : 12.02.2021

CORAM

HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.794 of 2012
and M.P. No.1 of 2012

The New India Assurance Co.Ltd.,
No.38, Moore Street, Chennai - 1

..Appellant

Vs.

1.S.Panneerselvam
S/o.Shanmugam

2.German Polymers & Coatings P.Ltd.,
S.No.123, Old Mahabalipuram Road,
Kandanchavadi.

3.The Managing Director,
Metropolitan Transport Corporation Ltd.,
Anna Salai, Chennai. - 2.

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.12.2010 in M.C.O.P.No.254 of 2007 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.1, Additional District & Sessions Judge, Poonamallee.

For Appellant :: Mr.M.Krishnamoorthy

For Respondents:: Mr.S.P.Panneerselvam

JUDGMENT

(Order of the Court was made by SATHI KUMAR SUKUMARA KURUP,J.)

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 02.12.2010 in M.C.O.P.No.254 of 2007 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.1, Additional District & Sessions Judge, Poonamallee.



2.This Civil Miscellaneous Appeal had been filed by the 2nd respondent before the Motor Accident Claims Tribunal. The Insurance Company seeking to set aside the award of the Tribunal on the ground that the claimant/1st respondent herein was negligent and tort-feaser. The claimant was travelling on the foot-board of the Transport Corporation bus on the date of the alleged accident and due to his negligence only, he fell down from the bus and sustain injuries, whereas he had blamed on the Van bearing Registration No.TN-07-AC-6547 belonging to the 2nd respondent herein. The 1st respondent/claimant was traveling in the Transport Corporation Bus in Route No.15M. The Tribunal failed to appreciate the fact that the claimant himself was the tort-feaser sustained injuries due to his negligence in traveling in the foot-board of the bus. Without taking into consideration of this fact, the Tribunal had awarded compensation and fastened the liability on the Insurance Company/the appellant herein, hence, the appellant seeks to set aside this appeal.

3.The learned counsel appearing for the 1st respondent/claimant had submitted his arguments stating that the Tribunal had rightly awarded the compensation. Therefore, there is no necessity for interference. The Tribunal had passed just compensation. Therefore, the same is to be confirmed.

Point for consideration:

4.Whether the appeal preferred by the 2nd respondent/Insurance Company to set aside the award is to be allowed.

5.Perused the claim petition in M.C.O.P.No.254 of 2007 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.1, Additional District & Sessions Judge, Poonamallee, filed by the claimant against 2nd respondent/Insurance Company. The order passed by the Motor Accident Claims Tribunal, Fast Track Court No.1, Additional District & Sessions Judge, Poonamallee, the decree passed by the Motor Accident Claims Tribunal, and the memorandum of grounds of appeal.

6.On perusal of the above, it is found that on the basis of the enquiry conducted by the Tribunal and on assumption of evidence gathered during the enquiry, the Tribunal had passed a considered order wherein the award of Rs.5,000/- was granted towards loss of income, Rs.5,000/- granted towards Transport to hospital, Rs.5,000/- granted towards Extra Nourishment, Rs.5,000/- granted towards Medical Expenses, Rs.5,000/- granted towards Pain and Sufferings and Rs.25,000/- granted towards Loss of future amenities for his disability. The total compensation awarded by the Tribunal was Rs.50,000/-.



7.The award was passed on 02.12.2010, the date of alleged accident was on 20.03.2007, the claim petition filed in the year 2007 and was disposed by the Tribunal on 02.12.2010. The present appeal filed in the year 2012. This appeal is taken up for disposal today, and in the meantime, eight long years had passed for making meagre amount of Rs.50,000/-. The award passed in the year 2012 and if it is set aside in the year 2020, it will cause miscarriage of justice. Therefore, due to the efflux of time, it is not appropriate at this distant point of time to delve merits of the appeal where the award amount is very meagre which this Court on merits also finds that the Tribunal has rightly awarded on consideration of the evidence and injuries sustained by the victim. Therefore, this Court does not find any infirmity in the award in order to interfere with the same. Accordingly, the Point for consideration is answered against the appellant.

8.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.50,000/- awarded by the Tribunal as compensation to the 1st respondent/claimant is confirmed. The appellant-Insurance Company is directed to pay a sum of Rs.50,000/- as compensation to the 1st respondent/claimant along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Motor Accident Claims Tribunal,
Fast Track Court No.1,
Additional District & Sessions Judge,
Poonamallee.

2.The Section Officer,
V.R.Section,
High Court of Madras.



+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.8371

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RP (CO)
CB (03/09/2021)