



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 23.12.2020

DATE ON WHICH PRONOUNCED : 20.01.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

C.M.A. (MD) .No.628 of 2011

and

MP (MD) No.4 of 2011

M/s.National Insurance Company Limited,
Represented by its Branch Manager,
24, Kamaraj Nagar,
Bodinayakanur,
Theni District.

: Appellant /2nd Respondent

Vs.

1.Manikandan : 1st Respondent/Petitioner

2.Mohaboob Ali : 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.12.2008, made in M.C.O.P.No.278 of 2005, on the file of the Motor Accident Claims Tribunal/Fast Track Court, Dindigul and to set aside the same.

For Appellant : Mr.R.Srinivasan

For R1 : No Appearance

For R2 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 05.12.2008, and made in M.C.O.P.No.278 of 2005 on the file of the Motor Accident Claims Tribunal/Fast Track Court, Dindigul.

2.The case of the petitioner/claimant before the Tribunal is that on 02.08.2005, at about 11.30 p.m., the petitioner was riding his two wheeler bearing Registration No.TN-39-AB-1328 in Dindigul to palani main road and when he was nearing the place of



occurrence, the lorry bearing Registration No.TAK-1113 was driven by its driver in a rash and negligent manner dashed against the petitioner, as a result of which, he sustained injuries and was taken to the City Hospital, Dindigul and thereafter, he was taking treatment as outpatient. The second respondent is the insurer of the first respondent. At the time of the accident, the petitioner/claimant was working as Mason and earning a sum of Rs.6,000/- per month. Claiming a compensation amount of Rs.5,00,000/- (Rupees Five Lakhs Only), the petitioner/claimant approached the Tribunal.

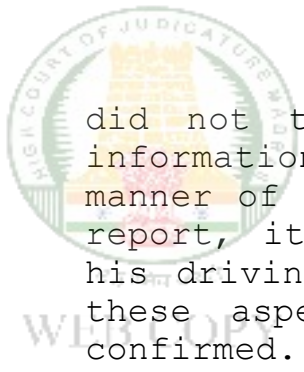
3.The case of the appellant/2nd respondent before the Tribunal is that the accident took place only due to the rash and negligent driving on the part of the petitioner, since he also contributed to the accident. The nature of the injuries sustained to the petitioner was also denied. Apart from the facts, which were denied as false.

4.Before the Tribunal, on the side of the petitioner/claimant, two witnesses were examined and eight documents were marked. On the side of the respondent, one witness was examined and no document marked.

5.At the conclusion of enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent's vehicle driver and fixed the liability on the insurer and the insured.

6.Regarding the compensation, it fixed the same at Rs.2,05,500/- (Rupees Two Lakhs Five Thousand and Five Hundred Only). So, challenging the fixation of liability and the award, the Insurance Company has filed this appeal mainly on the ground that there was no negligence on the part of the first respondent's vehicle driver.

7.Regarding the compensation also dispute is raised. P.W.1 is the petitioner and he has repeated the same averments made in the petition. It was suggested to him that only he was negligent in his driving and invited the accident. Subsequent to the occurrence, the complaint was given by the petitioner and in that complaint, he has stated that he was working as a Mason and at the time of occurrence, the lorry driver came in a rash and negligent manner and dashed against him. Ex.P.2 is the Final Report, filed by the police against the first respondent's vehicle driver. So, against these oral and documentary evidence, no contra evidence is available on the side of the respondent, except by examining R.W.1, the driver of the first respondent. He would say that only the petitioner was responsible for the accident. It appears that he might have informed the police, after the occurrence. But, he

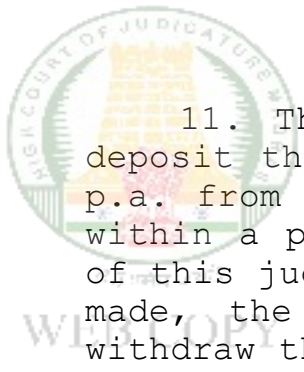


did not take any such action. Only the petitioner has given information to the police, at the time of occurrence. So, the manner of the accident as spoken by P.W.2, as shown by the Police report, it is established that R.W.1 was rash and negligent in his driving and caused the accident. Findings of the Tribunal on these aspects requires no interference and accordingly it is confirmed.

8.Regarding the compensation also, I find nothing excessive. Ex.P.3 is the Wound Certificate, which shows that the petitioner/claimant suffered three injuries. The lacerated injury measuring 20 x 6 cm bone deep on the right thigh region and lacerated injury measuring 18 x 5 x 3 cm on right leg region and swelling, tenderness and deformity over the base of first injury. When he was subjected to X-ray, it was shown that there was a fracture on the right thigh bone. There was a dislocation on the right hand. So, the injuries one and three were found to be grievous in nature. Disability Certificate is marked as Ex.P.8. Wherein, the total disability suffered by the petitioner was at 57%. P.W.2 would say that when he was examined the petitioner, he found that the thigh bone did not united properly. Deformation was noted and an operational scar was found on the right leg thigh knee, plastic surgery was also undertaken. The right leg is shorted by two inches. Movement restriction was also noticed on the injured portion and he can able to walk with stick. So, the reading of evidence of P.W.2 along with the medical records shows that because of the accidental injuries, the right leg was shorted by two inches, due to deformation and malunion of bones. So, assessment made by the Doctor is taken correct and not excessive in nature. The Tribunal by adopting percentage method, awarded a sum of Rs.55,000/- for the partial permanent disability and awarded a sum of Rs.55,000/- towards loss of earning capacity. To this customary amount, medical expenses were added and the total compensation has fixed as Rs.2,05,500/- (Rupees Two Lakhs Five Thousand and Five Hundred Only).

9.A perusal of calculation made by the Tribunal towards medical expenses, loss of income for six months period, pain and suffering and Transport to hospital are found to be reasonable and not excessive. So, this Court finds that there is no reason to interfere into the award passed by the Tribunal. Hence, the appeal is liable to be dismissed.

10.In the result, the award passed by the Motor Accident Claims Tribunal/Fast Track Court, Dindigul in M.C.O.P.No.278 of 2005, dated 05.12.2008, is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



11. The appellant / Insurance Company Ltd., is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and cost within a period of two months from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the first respondent herein / claimant is permitted to withdraw the entire amount after deducting amount, if any, already received by him.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar (CS)

dss

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Judge, Motor Accident Claims Tribunal/
Fast Track Court,
Dindigul.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
C.M.A. (MD) .No.628 of 2011
and
MP (MD) No.4 of 2011
20.01.2021

KM (18.02.2021) 4P 4C