



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.M.A.No.2177 of 2013

and

M.P.No.1 of 2013

M/s.National Insurance Co.Ltd.,
794, Sahid Nagar, I Floor,
Janpath, Bhuvaneswari Dt.,
Through the D.O.,, LRN Complex,
Saradha College Road, Salem.

...Appellant/2nd Respondent

Vs

1.S.Dharuman
S/o.Setti

2.Manjulatha Pattanayak
W/o.Bimalku Pattanayak ...Respondents/Petitioner/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 20.02.2012 made in M.C.O.P.No.564 of 2005 Accidents Claims Tribunal (II Additional Subordinate Judge) at Salem.

For Appellant	: Mr.S.Narasimhan
For Respondents	: M/s.P.Sathish for R1
	: No appearance for R2

JUDGMENT

The Insurance Company has preferred this Civil Miscellaneous Appeal challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Salem in M.C.O.P.No.564 of 2005 dated 20.02.2012.

2.The claimant /1st respondent is the driver of SRC Projects, Salem. The SRC project are doing contract work all over India including Orissa. The claimant/ 1st respondent took lorry chassis parts from Salem to Keonjhar, Orissa. On



19.07.2004, the claimant shifted the lorry spare parts to the vehicle bearing Regn. No.OR-02/E-9989 by Ejapuram Check Post at Andhra - Orissa Border. The Lorry was hired for the transportation of the goods. The claimant/ 1st respondent representing goods travelling along with goods in the lorry. On 19.07.2004 at 7.30 p.m. the driver of the lorry drove the lorry in a rash and negligent manner and dashed against one banyan tree on the road side, due to which, the claimant / 1st respondent sustained injuries all over the body. The petitioner was treated at Head Quarters Hospital, Keonjhar and subsequently shifted to Kalinga Hospital, Bhubaneswar. He took treatment till 04.08.2004 and due to the accident, the claimant was unable to do his routine work as he was doing it before. The 2nd respondent's vehicle was insured with the appellant. So both the appellant and the 2nd respondent are liable to pay a sum of Rs.5 lakhs as compensation.

3. The main contention of the learned counsel for the appellant is that F.C. has been cancelled, therefore, there is a violation of condition and pay and recovery has to be ordered.

4. The Tribunal based on the oral and documentary evidence, granted the following amounts as compensation with interest at 7.5% p.a.

S.No.	Head	Amount granted by the Tribunal
1.	Transport to Hospital	Rs. 10,000/-
2.	Extra Nourishment	Rs. 10,000/-
3.	Compensation for pain & suffering	Rs. 60,000/-
4.	Compensation for 38% disability	Rs. 38,000/-
5.	Loss of earning capacity during the period of treatment	Rs. 10,000/-
6.	Medical expenses + X-ray Bill	Rs. 2,404/-
	TOTAL	Rs.1,30,404/-

4. This Court heard the submissions made by the learned counsel appearing for the appellant and the learned counsel for the 1st respondent. Perused the materials available on record.

5. A cursory glance of the award would make it clear that the claimant is residing in Lakshmipuram, Gandhi Road, Salem. Another address stating from Uthangari Taluk, Dharmapuri District was also given. The accident had taken place at Keonjhar District, Orissa State. So, it cannot be said that the



claimant was a gratuitous passenger getting lift in the 2nd respondent lorry. So, the claimant is not a gratuitous passenger but he was travelling in the lorry representing the goods. The other point is that the lorry is not having proper F.C., which is also not proved by the appellant. In Ex.R3, which is the accident report of the vehicle in the 3rd page it has been stated that FC 08-07-2004 in bracket it has been stated as cancelled. Absolutely there is no other document filed by the appellant to show that the F.C of the Lorry was cancelled. Since because it is stated in the Ex.R3 that too in bracket were cancelled it cannot be treated that the F.C has been cancelled. The insurance is live from 10.08.2004 and the appellant is unable to prove any violation of policy condition. Hence, the appellant is liable to pay the compensation. Based on the oral and documentary evidence, it was proved that due to the accident, the claimant was unable to do his routine work as he did before.

6. In view of the above findings, the award of the Tribunal in granting compensation to the claimant / 1st respondent herein cannot be said to be excessive. Hence this Court finds no reason to interfere with the compensation awarded by the Tribunal and hence the appeal is dismissed.

7. The appellant / Insurance Company is directed to deposit the entire award amount together with interest to the credit of M.C.O.P.No.564 of 2005 on the file of the Motor Accident Claims Tribunal and II Additional Subordinate Judge, Salem, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the claimant / 1st respondent is entitled to withdraw the same by filing necessary application before the Tribunal. No costs. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kas



1.The Accidents Claims Tribunal
(II Additional Subordinate Judge)
Salem.

Copy to

The Section Officer,
VR Section
Madras High Court.

+1 CC to Ms.R. Sreevidhya, Advocate sr 16359.

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AJS (CO)
SP(05/04/2022)