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C.M.A.No.250 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

C.M.A.No.250 of 2013
and M.P.No.1 of 2013

National Insurance Company Ltd.,
D.O.No.1, L.R.N.Complex,
Saradha College Road,
Salem – 7.

... 2nd Respondent / Appellant

Vs.

1.Albert Richard

... Petitioner

2.Sumer Starch Product,
31, Mahakoil Street,
Shevapet, Salem.
Respondents

... 1st Respondent /

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.02.2012 made in M.C.O.P.No.448 of 2008 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge).

For Appellant : Mr.D.Bhaskaran

For Respondents 1 & 2 : No Appearance



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JUDGMENT

This Civil Miscellaneous Appeal No.250 of 2013 has been filed challenging the judgment and decree dated 03.02.2012 made in M.C.O.P.No.448 of 2008 on the file of Motor Accident Claims Tribunal, Sub-Court, Salem, awarding compensation of a sum of Rs.81,000/- to the first respondent.

2. The brief facts of the case are as follows:

On 15.04.2008 at 09.30.A.M, the first respondent was riding his motor cycle bearing Registration No.TN-30-AA-2503 near Paulless Dental Clinic on the Brindhavan Road. At that time, the second respondent's motor cycle bearing number TN-30-AB-0310 suddenly came from a house and hit the first respondent's motor cycle directly. Due to that both the vehicles were damaged and the first respondent has sustained severe fracture injuries all over the body and immediately admitted at the S.K.S. Hospital, Salem. He has also spent more than a sum of Rs.30,000/- towards his medical expenses. Stating that the accident had occurred, due to the rash and negligent driving



of the second respondent, the first respondent filed a claim petition, seeking compensation of a sum of Rs.3,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has awarded a compensation of a sum of Rs.81,000/-. Aggrieved by the said order, the appellant/Insurance Company has come out with the present appeal.

3. The learned counsel for the appellant/Insurance Company has submitted that the accident was not due to the act of rash and negligent manner of the second respondent's motor cycle and it is the first respondent, who drove his bike in a rash and negligence manner and try to over taken another vehicle and hit against the second respondent's motor cycle. Moreover, in the FIR, which was marked as Ex.P.1 has also clearly mentioned that it is only due to the rash and negligent act of the first respondent. He further submitted that the concerned police investigated and closed the matter as mistake of fact. Therefore, the appellant/Insurance Company is not liable to pay compensation to the first respondent and prayed for allowing this appeal.



4. In this case, notice was served to the respondents, however, none appeared on their behalf.

5. Heard the learned counsel for the appellant/Insurance Company and perused the materials available on record.

6. On perusal of the documents, Ex.P.1 is the copy of the FIR registered against the rider of the second respondent motor cycle based on the complaint preferred by the first respondent and the registration of the case against the rider of the second respondent motor cycle has not been disputed. Hence, the Trial Court finding is that when such is the case, the first respondent himself was examined as P.W.1 and produced Ex.P.1., the copy of FIR in support of his contention and in the absence of any contra evidence, it was held that the accident was due to the rash and negligent act of the rider of the second respondent's motor cycle.

7. In view of the above finding of the Tribunal, it is crystal clear and



evident that the appellant/Insurance Company is liable to pay the compensation to the first respondent. In regard to the injuries sustained by the first respondent, Ex.P.2, the copy of the wound certificate issued by the SKS hospital, Salem, in which it was mentioned that the injuries sustained by the first respondent on his left clavicle region is grievous in nature. Ex.P.3 is the discharge summary which discloses the fact that the first respondent has underwent a treatment from 15.04.2008 to 24.04.2008. In addition to the above document, the first respondent was able to produce the disability certificate Ex.P.4 through P.W.2, the Orthopaedic doctor who examined the first respondent with reference to the medical records and opined that the movement of the left shoulder is restricted and the first respondent finds difficulty in lifting any objects, combing, ablution and assessed the disability at 28%.

8. After considering the oral and documentary evidence and available records, the nature of injuries, period of treatment and disablement etc., the Tribunal has awarded a compensation of a sum of Rs.81,000/- which in view of this Court seems to be just and reasonable and warrants no interference by



this Court.

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9. In fine, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.01.2023

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

J.SATHYA NARAYANA PRASAD,J.

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To

1.The Motor Accidents Claims Tribunal,
Sub-Court,
Salem.

2.The Section Officer,
VR Section, Madras High Court.

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