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C.M.A.No.1138 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1138 of 2018

and

C.M.P.No.9413 of 2018

The New India Assurance Co.Ltd.,
Lajapet Nagar,
New Delhi.

... Appellant

vs.

1.Tamilselvan
2.M/s.Ashish Leasing Company,
No.75, Link Road,
Lajpat Nagar,
New Delhi.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree in M.C.O.P.No.991 of 2001 dated 09.09.2005 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Chengalpattu District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.S.Jaganathan
for R1

R2- Notice Dispensed with



C.M.A.No.1138 of 2018

J U D G M E N T

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Challenging the Award dated 09.09.2005 passed in M.C.O.P.No.991 of 2001 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Chengalpattu District, the Insurance Company, has filed the above Civil Miscellaneous Appeal.

2. The case of the claimant before the Tribunal is that on 06.04.1994 at about 8.50 a.m., when the claimant was crossing the road in his bicycle, near War Cemetery Road, Mount Poonamallee Road, the driver who had driven the Maruti Van bearing Registration No.DL-3CC-0181 in a rash and negligent manner, dashed against the claimant. Due to the said impact, the claimant sustained grievous injuries. It is the further case of the injured claimant that he being a minor school student with disability of 55%, is entitled for compensation of Rs.1,50,000/-.

3. The first respondent being the owner and the second respondent being the insurer of the said vehicle remained *ex-parte* before the Tribunal.

4. To substantiate the case on the side of the claimant, the claimant examined himself as P.W.1 and marked documents Ex.P1 to



C.M.A.No.1138 of 2018

Ex.P6. On the side of the respondents, neither oral evidence nor documentary evidence was adduced before the Tribunal.

5. The Tribunal, after considering the oral and documentary evidence available on record, awarded a total compensation of Rs.87,250/- with future interest at 7.5% per annum from the date of claim petition till the date of deposit with costs and the Tribunal directed the Insurance Company to deposit the entire compensation into the Court.

6. Challenging the above Award of compensation, the Insurance Company Limited has filed the present Civil Miscellaneous Appeal.

7. The learned counsel for the appellant/Insurance Company has submitted that the Award passed by the Tribunal is an *ex-parte* Award. The appellant was not served with notice from the date of accident on 06.04.1994 till the date of judgment on 09.09.2005. He further submitted that the compensation awarded by the Tribunal is highly excessive, exorbitant and unsustainable in law. Further, the Tribunal held that the accident had occurred only due to rash and negligent driving of the driver of



C.M.A.No.1138 of 2018

the offending vehicle, however, without fixing the liability on the owner of the offending vehicle, the Tribunal erroneously fixed the liability on the insurer.

8. This Court, while perusing the records, found that the panel counsel of the Insurance Company, who undertook to file vakalat, has not entered appearance or filed any vakalat before the Tribunal. It is further seen that the Insurance Company was duly served with notice, but failed to appear before the Tribunal. Since there was no response from the appellant before the Tribunal, the Tribunal after examining the claimant as P.W.1 and the documents marked by P.W.1 as Ex.P1 to Ex.P6, awarded compensation.

9. Now the present appeal was filed only on the ground that no summons were served and without giving an opportunity to the



C.M.A.No.1138 of 2018

appellant/Insurance Company, the Tribunal passed an *ex-parte* Award, which is totally in correct.

10. The fact remains that notice was duly served on the appellant/Insurance Company before the Tribunal and one of the panel counsel for the Insurance Company also undertook to file vakalat, but he failed to do so, and considering the long pendency of the claim petition, the Tribunal passed an *ex-parte* Award. The appellant/Insurance Company has not come to this Court with clean hands, and hence, this Court is not inclined to set aside the impugned Award passed by the Tribunal.

11. Admittedly, the claim petition was filed in the year 2001 and in the said claim petition, Award and decree was passed only in the year 2005. The Tribunal has not passed award within a hour after service of summons, since there was no response from the Insurance Company, the Tribunal awarded compensation after four years from the date of filing of claim petition. This Court does not find any perversity in appreciation of the Award passed by the Tribunal. This Court also finds that the impugned



C.M.A.No.1138 of 2018

Award passed by the Tribunal by granting compensation is "just, fair and reasonable", and hence, they are confirmed.

12. There is no merit in the present appeal, which is accordingly dismissed, confirming the impugned Award passed by the Tribunal. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

13. The appellant/Insurance Company is directed to deposit the above entire award amount to the credit of M.C.O.P.No.991 of 2001 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) Chengalpattu District along with interest and costs awarded by the Tribunal, from the date of claim petition till the date of deposit, 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 Tribunal is directed to credit the compensation to the Bank Account of the claimant, by following the judgment of a Division Bench of this Court in C.M.A.No.428



C.M.A.No.1138 of 2018

of 2016, dated 11.03.2016 (reported in 2016 (2) LW 561 - The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). The claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs.

04.08.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Motor Accident Claims Tribunal
(Principal Subordinate Judge),
Chengalpattu District.

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



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C.M.A.No.1138 of 2018

P.VELMURUGAN, J.

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C.M.A.No.1138 of 2018

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