



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2015

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

C.M.A.(MD) No. 827 of 2015 and
M.P.(MD).No. 3 of 2015

The Branch Manager,
The Oriental Insurance Company Limited,
Office at Madurai Road,
Virudhunagar.

... Appellant/2nd Respondent

Vs.

1. Mahalingam ... 1st respondent/Petitioner

2. The Secretary,

Lord Venkateswara Matriculation School,
Office at D.No.3/195,
Virudhunagar, T. Kallupatti,
Madurai District.

... 2nd Respondent/1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehilces Act against the Judgment and Decree passed in MCOP.No.140 of 2012 dated 22.10.2013 on the file of Motor Accident Claims Tribunal, Subordinate Court, Virudhunagar.

For Appellant : Mr. C. Ramachandran.

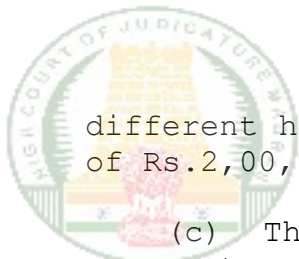
J U D G M E N T

The Civil Miscellaneous Appeal is filed against Judgment and Decree passed in MCOP.No.140 of 2012, dated 22.10.2013, on the file of Motor Accident Claims Tribunal, Subordinate Court, Virudhunagar.

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

(a) The appellant Insurance Company is the second respondent in MCOP.No.140 of 2012, on the file of Motor Accident Claims Tribunal, Subordinate Court, Virudhunagar. The first respondent filed the said claim petition for a compensation of Rs.2,00,000/-, for the injury sustained by him, in the accident that occurred on 21.06.2012, due to the rash and negligent driving by the driver of the bus belonging to the second respondent. The Tribunal awarded a sum of Rs.25,000/- as compensation. Against the said order, the present appeal is filed.

(b) On 21.06.2012 at about 8.45 am the first respondent was riding the motor cycle with one Karuppusamy as pillion rider. While so the driver of the bus belonging to the second respondent drove the vehicle in a rash and negligent manner and hit the motorcycle from a behind and caused accident. In the accident the said Karuppusamy died. The first respondent sustained multiple injuries. He took treatment in two



different hospitals for four days. In the circumstances, he claimed a sum of Rs.2,00,000/- as compensation.

(c) The appellant filed counter affidavit denying the various averments made by the claimants. According to the appellant the accident took place only due to rash and negligent driving by the first respondent. The first respondent did not possess driving licence. The injury sustained by the first respondent are only simple injury. The insurer of the motorcycle is necessary party and prayed for dismissal of claim petition.

3. The legal heirs of the deceased Karuppusamy filed MCOP.No.150 of 2012 and joint trial was conducted before the Tribunal. Before the Tribunal one Rengasamy was examined as PW.1 and first respondent examined himself as PW2 and 14 documents were marked as Exs.P1 to P14.

4. The appellant and second respondent did not let in any oral and documentary evidence. The Tribunal considering the pleadings and evidence came to the conclusion that the accident took place only due to rash and negligent driving by the driver of the second respondent. The first respondent did not examine the Doctor who treated him. The first respondent filed discharge summary and bills for medical expenses. The Tribunal accepted this documents and awarded a sum of Rs.25,000/- as compensation.

5. Against the said order the present appeal is filed.

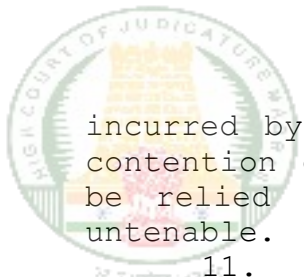
6. The learned counsel for the appellant contended that the Tribunal failed to see that the accident took place only due to the rash and negligent driving by the first respondent. The Tribunal is not correct in accepting the evidence of PW.2, with regard to nature of injuries sustained by him. The first respondent did not examine the Doctor. Hence, the Tribunal is not correct in relying on Exs. P8 to P12, medical records. Further the compensation awarded by the Tribunal is excessive and prayed for allowing the appeal.

7. I have carefully perused the materials on record and heard the arguments of the learned counsel appearing for the appellant.

8. Before the Tribunal, the first respondent examined himself as PW.2 and deposed the manner in which the accident took place. He has stated that the the accident took place only due to rash and negligent driving by the driver of the bus belonging to the second respondent. The appellant and second respondent did not let in any contra evidence. The driver of the bus was not examined.

9. In view of the evidence of PW.2, Tribunal came to the correct conclusion that the accident took place only due to rash and negligent driving by the driver of the bus belonging to the second respondent. There is no infirmity in the said order.

10. In the said accident the first respondent sustained injuries. According to the appellant, the injuries are simple injuries. The first respondent produced the discharge summary, medical bills, Exs.P8 to P12 for taking treatment for injuries sustained by him and medical expenses



incurred by him. The appellant has not disputed these documents. The contention of the counsel for the appellant that these documents cannot be relied as the Doctor was not examined to prove this document is untenable.

11. Admittedly, the accident occurred and first respondent sustained injury and one Karuppasamy died. In the circumstances, the Tribunal has not committed any irregularity in relying on Exs.P8 to P12 and awarding compensation. The compensation awarded is just compensation.

12. The learned counsel for the appellant represented that against the MCOP.No.150 of 2012, they have filed CMA(MD).No.1029 of 2015. It is open to the appellant to raise all the objections in the said appeal, with regard to MCOP.No.150 of 2012.

13. In the result, the Civil Miscellaneous Appeal is dismissed and the order passed in MCOP.No.140 of 2012, dated 22.10.2013, on the file of Motor Accident Claims Tribunal, Subordinate Court, Virudhunagar, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

The Assistant Registrar(co)

/True copy/

Sub-Assistant Registrar

To

Motor Accident Claims Tribunal, Subordinate Court, Virudhunagar.

+1cc to Mr.C.Ramachandran, Advocate SR.No.42556

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