

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.2014 of 2016

Hari ... Appellant / Petitioner

versus

1. Sudhakar

2. The Divisional Manager,
The New India Assurance Co. Ltd.,
Big Bazaar,
Tiruvannamalai. ... Respondents / Respondents
(R1 was ex parte before the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.11.2013, made in M.A.C.T.O.P.No.1494 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur Taluk.

For Appellant : Mr.Terry Chella Raja
For R2 : Mr.M.Krishnamoorthy

JUDGMENT

The claimant, Hari, aged about 40 years, employed as Driver, earning a sum of Rs.7,000/- p.m. met with an accident on 06.04.2007. When he was driving a car, a Tractor, which was driven by its driver in a rash and negligent manner, dashed against the car, due to which, he sustained grievous injuries, which led to permanent disablement.

2. The claimant has made a claim as against the owner and insurer of the car, in which, he has been employed as a Driver at that point of time. Finding that the driver is a tort-feasor and he cannot make a claim against the owner and insurer of the car, the claim petition has been dismissed by the Tribunal. Challenging the same, the claimant has preferred this appeal.

3. The learned counsel appearing for the appellant/claimant would point out that the theory of negligence would be applicable only in case of claim arising under Motor Vehicles Act and hence, the theory of negligence has no relevance, when the claim is made under the Employees' Compensation Act, 1923.

3.1. It is also contended that an option has been made available to the claimant to make a claim either under the Employees' Compensation Act, 1923 or under the Motor Vehicles Act, 1988 and not under both the Acts and when the claim has been made under one enactment, the Tribunal should have considered the claim under either of the enactment.

3.2. This contention is fully supported by a decision of this Court, reported in 2015 (2) TNMAC 342 (DB) (M.Anbalagan vs. K.M.Aslam Basha and others), wherein, it has been held that if the aggrieved or interested person made a claim for compensation either under the Workmen's Compensation Act, 1923 or under the Motor Vehicles Act, 1988, the compensation as payable under the Workmen's compensation Act should have been considered and the only bar is that the claim cannot be made under both the Acts.

4.1. Under such circumstances, even though the claim is not maintainable under the Motor Vehicles Act 1988, if the claim is maintainable under the Employees' Compensation Act 1923, the claim should have been considered under the later enactment.

5. The learned counsel for the second respondent-Insurance Company would point that for the purpose of claim made under Employees' compensation Act, as the disability has been assessed at 20%, the rate of factor to be adopted is 181.37 and if that yardstick is adopted, the compensation payable would be at Rs.52,235/- ($\text{Rs.4000} \times 181.37 \times 12/100 \times 60/100$) and the interest at the rate of 12% p.a. (from the date of expiry of 30 days from the date of accident) (excluding the interest amount for the default period of 344 days) would be at Rs.53,279/- and thus, the total compensation payable would be Rs.1,05,514/-. This contention is perfectly justified and the compensation is awarded at Rs.1,05,514/-.

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6. The Insurance Company is directed to deposit the entire amount of compensation within a period of one month from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant is permitted to withdraw the same. The claimant shall pay the necessary court fee for the compensation awarded by this Court. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Special Subordinate Judge Tirupattur

copy to

The Section Officer
VR Section
High Court Madras

+1 cc to M/s.M.Malar Advocate sr 73583

+1 cc to M/s.M.Krishnamoorthy Advocate sr 73585

C.M.A.No.2014 of 2016

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