

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.343 of 2011

M/s.United India Insurance Co. Ltd.,
rep. By its Manager,
Namakkal (PO),
Pennagaram Taluk. Appellant/2nd Respondent

Vs.

1. J.Devadass1st Respondent/claimant
2. R.Rasakumar
3. R.Latha
(R2 & R3 set exparte)
4. M/s.New India Assurance Co. Ltd.,
By-Pass Road, Dharmapuri. Respondents 2 to
4/Respondents 1,3 and 4

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 16.06.2010 made in M.C.O.P.No.802 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Dharmapuri.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.M.Selvam, for R1
Mr.M.Krishnamoorthy, for R4

J U D G M E N T

The Insurance Company, with which the Lorry involved in the accident was insured, has come up with this Appeal, challenging the negligence fixed by the Tribunal.

2. Heard the learned counsel on either side.

3. It is the case of the injured claimant before the Tribunal that on 02.05.2008, while he was driving a Goods Tempo vehicle bearing Registration No.TN 02 C 9975 belonging to one R.Latha, the 3rd respondent herein from Papparapatty towards Salem, to unload fully packed Tamarind bags, along with one

Ravi, the husband of the 3rd respondent, due to traffic jam on Thoppur Ghar road, the Police diverted the vehicles proceeding towards Salem to use the adjacent road. While so, about 6.30 p.m., when the claimant was driving the Tempo slowly and carefully on the extreme left side of the road towards Salem, near Anjaneyar Temple, a Lorry bearing Registration No.TN 28 7452 belonging to one R.Rasakumar, the 2nd respondent herein, came in a rash and negligent manner in the opposite direction and dashed against the Tempo. Resultantly, the front portion of the Tempo got damaged heavily and the claimant suffered severe crush injuries in both his legs.

4. After first aid at Government Hospital, Dharmapuri, the injured claimant was rushed to Ganga Hospital, Coimbatore and underwent treatment as an inpatient. Due to multiple crush injuries, both his legs were amputated on 02.05.2008, resulting in total permanent disability. According to the injured claimant, he is an experienced skilled Driver and was aged 54 years at the time of accident. He filed a Claim Petition before the Tribunal seeking a sum of Rs.15,00,000/- as compensation for the injuries.

5. Before the Tribunal, the injured claimant was examined as P.W.1; One Dr.Krishnakumar was examined as P.W.2 and the owner of the Tempo vehicle, viz. one Ravi, was examined as P.W.3. On behalf of the claimant, 14 documents vide Exs.P-1 to P-14 were marked. On the side of both the Insurance Companies, none were examined and no document was marked.

6. The Tribunal, on analysis of the available oral and documentary evidence, held that the Driver of the Lorry bearing Registration No.TN 28 7452 is responsible for the accident. It awarded a sum of Rs.7,56,167/- as compensation with accrued interest at 7.5% per annum and fixed the liability to compensate the injured claimant on the appellant/United India Insurance Company and the owner of the Lorry, viz. R.Rasakumar, either jointly or severally. Details of the award are as under:

Heads	Amount
Loss of income (Rs.4000/- x 12 x 11 x 90%)	Rs. 4,75,200.00
Pain and Suffering	Rs. 10,000.00
Mental Agony	Rs. 5,000.00
Extra Nourishment, Loss of amenities & Transport Charges (each Rs.5000/-)	Rs. 15,000.00

Heads	Amount
Medical Bills	Rs. 2,50,967.00
Total	Rs.7,56,167.00

7. Learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to appreciate that as per the immediate version of the accident in the F.I.R., it was the claimant himself who was at fault and not the Driver of the Lorry.

8. A perusal of the F.I.R. marked as Ex.P1 shows that the accident had occurred due to the negligence of the Tempo Driver, i.e. the claimant. But, the signature of the complainant is not found in the F.I.R. While so, one Ravi, who was examined as P.W.2 has stated that neither he nor the claimant lodged a complaint with the Police as regards the alleged accident. Also, the averment of the claimant in his claim petition before the Tribunal that Thoppur Police got signature of the said Ravi in an empty white paper and recorded their own statement against the claimant, has also to be taken note of. Since the versions of P.W.1/claimant and P.W.2/Ravi were not refuted by the appellant/Insurance Company with requisite oral and documentary evidence, the Tribunal, in view of the ratio laid down in Bimla Devi and others vs. Himachal Road Transport Corporation and others, 2009 (1) TNMAC 700 (SC), held that the burden of proof lies on the owner and the Insurance Company of the offending vehicle and fixed the negligence on the Driver of the Lorry.

9. On a careful analysis of the entire oral and documentary evidence, this Court is of the view that the onus lies on the appellant/Insurance Company to rebut the evidence against it and in the absence of requisite evidence on its side, it cannot absolve from the liability to compensate the claimant. Hence, the decision of the Tribunal fixing the negligence on the Driver of the Lorry and the liability to compensate the injured claimant jointly and severally on the owner of the Lorry and the appellant/Insurance Company is confirmed.

10. Since the quantum awarded by the Tribunal is not in dispute, the same is confirmed, taking into account the permanent disability sustained by the claimant. The interest awarded by the Tribunal at 7.5% per annum is also confirmed.

11. It is made clear that if no amount is deposited so far, the appellant/Insurance Company either severally or jointly with the owner of the Lorry is/are directed to deposit the entire award amount, i.e. a sum of Rs.7,56,167/- (Rupees Seven Lakhs Fifty Six Thousand One Hundred and Sixty Seven only) together with accrued interest to the credit of M.C.O.P.No.802 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Dharmapuri within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay compensation to the claimant in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company.

The Civil Miscellaneous Appeal is dismissed with the above direction and observation. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To :

The Additional District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

+1.cc to Mr.M.B.Gopalan, Advocate Sr.15409
+1cc to Mr.M.Krishnamoorthy, Advocate sr.14804
+1cc to Mr.M.Selvam, Advocate Sr.14757

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srg 13/10/2016

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