

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2016

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.444 of 2013
and
M.P.No.1 of 2013

The Divisional Manager,
Ms.United India Insurance Co. Ltd.,
No.46, Katpadi Road,
Vellore. Appellant/2nd Respondent

Vs.

1.Elumalai 1st Respondent/Petitioner
2.Govindaraj 2nd Respondent/1st Respondent
(2nd respondent ex parte in lower Court
and hence notice may be dispensed with)

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Award and decree order dated 22.03.2010 passed in M.C.O.P.No.418 of 2004 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Thiruvannamalai.

For Appellant : Mr.N.Vijayaraghavan

For Respondent 1 : No appearance
R2-Exparte

JUDGMENT

The Transport Corporation has preferred this Civil Miscellaneous Appeal challenging the Judgment and decree dated 22.03.2010 passed in M.C.O.P.No.418 of 2004 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Thiruvannanmalai.

2. Heard the learned counsel for the appellant and perused the materials available on record.

3. On 04.07.2002 about 2.30 a.m., when the claimant who was working as a load-man was travelling in 709 TATA Van bearing

Reg.No.TN-25 D 0804 proceeding towards Thiruvannamalai near Athanur Village, the driver of the Van drove the vehicle in a rash and negligent manner and dashed against the tamarind tree, due to which, the claimant sustained severe multiple injuries all over the body. Claiming compensation to the tune of Rs.1,00,000/- the claimant approached the Tribunal by filing M.C.O.P.No.418 of 2004.

4. The Tribunal, based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the driver of the van was having valid driving licence to drive the van, came to the conclusion that the driver of the van was responsible for the accident and consequently liability was fixed on the appellant Insurance Company, being the Insurer of the van.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No	Heading	Amount awarded by the Tribunal
1	Disability at 30%	Rs. 51,840.00
2	Pain and Sufferings	Rs. 2,160.00
3	Transport expenses, other medical expenses and extra nourishment	Rs. 2,000.00
	Total	Rs. 56,000.00

6. Mr. N. Vijayaraghavan, learned counsel appearing for the Insurance Company would contend that several persons travelled in the goods vehicle and hence the Insurance company is not liable to pay compensation. That apart, in terms of Sections 147 and 148 of the Motor Vehicles Act, the doctrine of payment of compensation to persons who travel in goods vehicle does not arise, as Section 147 does not envisage payment of compensation to passengers of a goods vehicle and when once there is no coverage of payment, the question of recovery does not arise. The victim of the accident and the injuries sustained are not in dispute and the only dispute is that the claimant has travelled in a goods vehicle and therefore, he is not entitled to compensation. Learned counsel further contended that the Tribunal has also erred in awarding exorbitant compensation for the simple injuries sustained by the claimant.

7. Per contra, learned counsel appearing for the claimant submitted that the injured was working as a loadman in

the van in question and he travelled in the van along with the goods. Due to the injuries suffered by him in the accident, he is unable to continue his avocation as a loadman. He further submitted that considering the nature of injuries and the period of treatment, the Tribunal has awarded the compensation, which is just and reasonable and sought for dismissal of the appeal.

8. Challenging the compensation, the appellant has contended that the claimant travelled in the van as an unauthorised passenger and that several persons travelled in the van along with the goods and hence, the Tribunal ought not to have awarded compensation to the loadman, who suffered injuries. Admittedly, there is no evidence let in by the Insurance Company on this aspect. Even though it is stated by the appellant that several persons have also sustained injuries in the same accident and they have also filed claim petitions claiming compensation and the Tribunal has awarded compensation to them also, against which, appeals are stated to be pending, this Court makes it very clear that the issue raised by the appellant in this case is decided based on the documentary evidence and the pleadings made by the claimant. The Tribunal has rendered a finding that due to the rash and negligent driving of the driver of the van, the accident occurred and that the claimant and others have sustained grievous injuries. The Tribunal has taken note of the evidence of PW2-Dr.Raveendran, who has assessed the disability at 30% and awarded compensation. Only after analysing the oral and documentary evidence, the Tribunal fastened the liability upon the appellant/ Insurance Company, insurer of the van in question and that there is no illegality in the order passed by the Tribunal, as the Insurance Company has not let in any evidence denying their liability. Thus, the appeal is liable to be dismissed. This Court makes it very clear that any observation made in this case will not have comparison with the other cases, if any, pending on the very same accident.

9. In fine, the Civil Miscellaneous Appeal is dismissed, confirming the quantum of compensation and the rate of interest at 7.5% per annum awarded by the Tribunal. The appellant/Insurance Company is directed to deposit the entire award amount together with accrued interest, less the amount already deposited, to the credit of M.C.O.P.No.418 of 2004 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Thiruvannamalai, within a period of eight 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.

10. The Trial Court is expected to follow the procedures contemplated in the order dated 11.03.2016 passed by a Division Bench of this Court in C.M.A.No.428 of 2016 scrupulously. No costs. Consequently, connected M.P.No.1 of 2013 is also closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar
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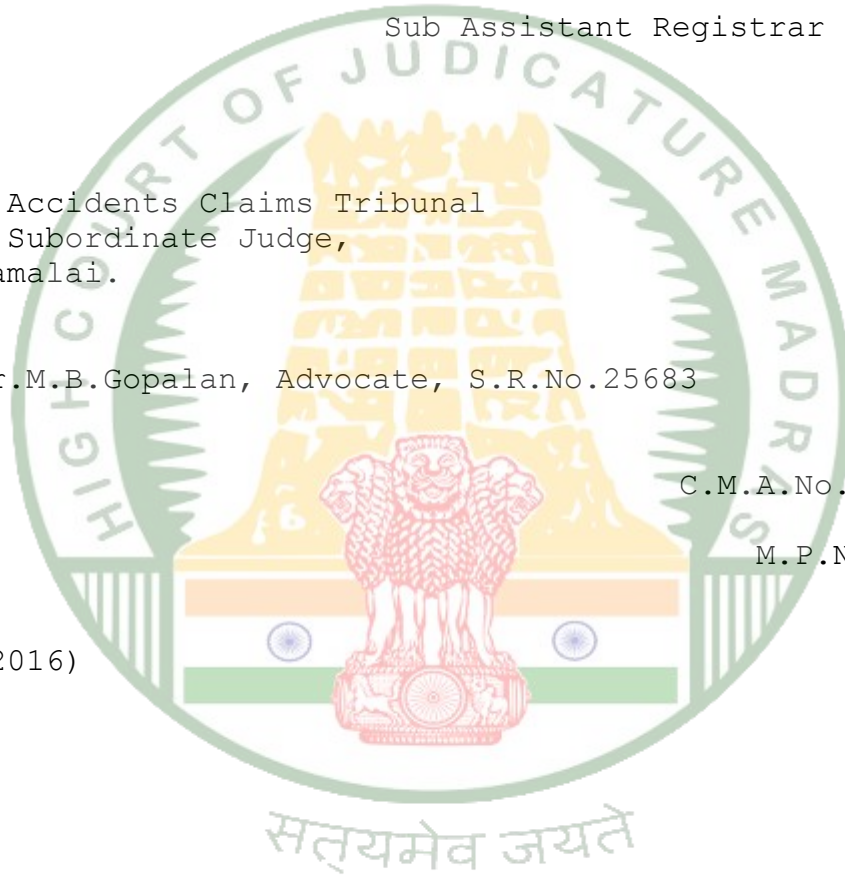
To

The Motor Accidents Claims Tribunal
Principal Subordinate Judge,
Thiruvannamalai.

+lcc to Mr.M.B.Gopalan, Advocate, S.R.No.25683

C.M.A.No.444 of 2013
&
M.P.No.1 of 2013

PPA(CO)
CA(11/11/2016)



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