

;IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.3292 of 2013
and
M.P.No.1 of 2013

The New India Assurance Co. Ltd.,
Ram Complex,
No.29, Paramathy Road,
Namakkal District. ... Appellant/2nd Respondent

Vs.

1.R.Jothikrishnan
2.J.Malliga
3.S.P.Balasubramaniam
4.M/s.United India Insurance Company Limited,
Branch Office,
5-B/11, SBI Upstairs,
Salem Road, Rasipuram Taluk,
Namakkal District. ... Respondents/Petitioner/
Respondents 1,3 and 4

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.700 of 2008, dated 20.03.2012, on the file of the Motor Accidents Claims Tribunal, Sub Court, Rasipuram.

For Appellant : Mr.N.Vijayaraghavan

For Respondent : Mr.Ma.P.Thangavel (for R1)

No Appearance (for R2)

R3 & R4 - Dismissed vide order
dated 31.10.2014

JUDGMENT

[Judgment of the Court was delivered by M.V.MURALIDARAN,J.]

The New India Insurance Company has filed this Civil Miscellaneous Appeal questioning the liability fastened over

it and also the quantum arrived by the Motor Accident Claims Tribunal, Rasipuram in M.C.O.P.No.772 of 2005 dated 20.03.2012.

2.For the sake of convenience the parties to the appeal are referred with their Original rank as before the Claim Petition.

3.The case of the 1st respondent / Claimant is as follows:-

On 02.03.2015 the 1st respondent namely R.Jothi Krishnan travelled in a goods vehicle bearing Reg. No.TN.27-D-9619 as owner of goods from Namakkal to Salem. while the goods vehicle was proceeding near Sellampatti Bus stop, situated in Namakkal-Salem Main Road, bus bearing Registration No.TN 47 H 7691 was stopped suddenly at the said spot without any indication and that driver of 407 Tempo Van in a rash and negligent manner and dashed at the back side of the above said, resulted in grievous multiple injuries of the claimant / 1st respondent all over his body.

4.Immediately after accident the 1st respondent was admitted into Aravind Hospital at Namakkal, where he was treated as inpatient for nearly 70 days from 02.03.2005 to 10.05.2005. He underwent an operation for fracture of his right leg. Thereupon the 1st respondent filed claim petition in M.C.O.P.No.772 of 2005 before the Motor Accident Claims Tribunal, Fast Track Court, Namakkal and claiming Rs.20 lakhs as compensation for the injury suffered by him.

5.The appellant /2nd respondent insurance company filed counter and contented that the 1st respondent herein had travelled in the goods vehicle as a gratuitous passenger and therefore the Insurance Company is not liable to indemnify the claim of the 1st respondent herein. They further contended that the driver of the bus is responsible for the above said accident. Therefore if at all the 1st respondent herein / claimant is entitled for compensation and the same is liable to be paid only by the respondents 3 and 4 herein.

6.On the side of the 1st respondent/claimant, he examined himself as PW1 and one Doctor Mani, who treated the 1st respondent was examined as PW2 and on his side Exs.P1 to P15 were marked.

7. On the side of the appellant RW1, the Officer authorized by the Insurance Company was examined and Exs.R1 to R3 were marked. The PW2 doctor assessed the disability of the 1st respondent herein as 60% and deposed that due to the accident the 1st respondent herein would not be fit to lift any weight or even he is not in a position to sit. Further 1st respondent's right leg became numbness.

8. The tribunal below after considering the oral and documentary evidence adduced on either side was pleased to award a sum of Rs.15,04,600/- towards compensation with 7.5% interest from the date of petition. Being aggrieved over the above said award the 2nd respondent/appellant herein has come up with this appeal.

9. We have heard Mr.N.Vijayaraghavan, learned counsel for the appellant and Mr.Ma.P.Thangavel, learned counsel for the 1st respondent. No representation on behalf of the 2nd respondent and the entire materials available on records are perused.

10. It is the first and foremost contention of the Insurance Company is that the 1st respondent herein travelled in the goods vehicle which is against the policy condition. It is a settled proposition of law that the person travelled in the goods vehicle is termed as Gratuitous passenger and that they are not liable to seek compensation from the Insurance Company.

11. In this case the 1st respondent herein travelled as unauthorized passenger in the goods vehicle which is not concerned under Section 147 of Motor Vehicles Act, which is also against the policy condition Ex-A3. The Learned Counsel further contented that the 1st respondent herein was the husband of the insured and he failed to disclose the same in the claim petition with a malafide intention of sustaining the claim of owner of goods. The tribunal below is not justified in holding that the 1st respondent herein as owner of goods when he himself admitted that he was not travelling with goods at the time of accident.

12. With regard to the quantum of compensation the Learned Counsel for the Insurance Company appellant submitted that the Tribunal below erred in adopting higher multiplier in arriving. The 1st respondent herein suffered with 55% disability and for that he is entitled only for Rs.55,000/-, but the tribunal below awarded a sum of Rs.10,29,600/- by applying multiplier method for the disability of 55%, which is highly excessive and arbitrary. Further the tribunal below had erred in fixing the monthly salary of the petitioner at Rs.12,000/- without any basis by relying upon the audit report Ex.A11, which is unsustainable. In any event the quantum of compensation arrived at by the tribunal below is highly excessive and the same is liable to be set aside.

13. Per contra, the Learned Counsel for the 1st respondent herein submitted that the 1st respondent herein was hale and healthy at the time of accident and he was doing yarn business and earning Rs.15,000/- monthly from the said business and he was also an Income Tax assessee bearing Pan No is AFWPJ9179E. On the date of accident he travelled in 407 tempo van to load the yarn and therefore he could be considered travelling as the owner of the goods. Even though the owner of the Tempo van is none other than the wife of the 1st respondent herein, it cannot be stated that the 1st respondent herein cannot hire the said goods vehicle from his wife. He went along with the goods vehicle to purchase the yarn. Before loading yarn bundles the goods vehicle involved in the accident and therefore the Insurance Company in which the goods vehicle is insured is liable to pay compensation to the 1st respondent herein. Further the Tribunal below taking into the consideration of the gravity of the injury sustained by the 1st respondent herein has awarded a just and reasonable compensation. The 1st respondent herein sustained the following injuries:

1. Fracture middle shaft of right femur.
2. Fracture of 3rd end of tibia right leg.
3. Fracture lower end of femur left side.
4. Fracture upper end of Tibia left present (Left side)
5. Swelling over left chest.
6. Lacerated wound over scalp region on parietal area, frontal area - Brain matter outside fracture with skull.

14. In order to prove the said injuries and the percentage of disability the 1st respondent has examined PW2 Dr. Mani. He deposed that the petitioner suffered with 60% permanent disability and he cannot do business, which he did prior to the accident because of the injury sustained in the said accident. The tribunal below taking into consideration of the above said act and the nature of injury sustained by the 1st respondent herein has adopted the multiplier method as per the guideline prescribed by the Hon'ble Supreme Court which is proper and the same is not warranting interference by this Hon'ble Court. The compensation amount awarded on all heads is just and reasonable and the same need not be disturbed.

15. We have carefully considered the rival submission of the parties. As for the liability is concerned the tribunal has elaborately discussed the question of liability and held that the claimant who travelled in tempo van to purchase the Yarn could be termed only as the owner of the goods by placing reliance upon the judgment of Hon'ble Apex Court reported in 2008 ACJ 1741 in the case of United India Insurance Co. Ltd. Vs. Suresh KK and Another. In the case on hand the accident had taken place before loading the goods and the claimant travelled along with the driver travelled in the capacity as

the owner of the goods to load the same for transportation.

16. In this context the Learned Tribunal had rightly placed reliance upon the decision of Hon'ble Apex Court made in matter of United India Insurance co. ltd Versus Suresh K.K. & anr., reported in 2008 ACJ 1741 wherein the view of the High Court was approved and upheld, holding as following "According to us, the language of the amended provision does not show that the owner or the representative must accompany the goods or his representative who hires the vehicle travels in the hired vehicle from the place of hiring to the place where the goods are to be loaded into the vehicle and then proceeds to travel along with the goods. It is also common that after unloading the goods such passengers travel in the same vehicle to the place from where they commenced journey. The passenger does so and is allowed to do so in his capacity as the owner of the goods or his representative who has hired the vehicle for transporting goods. The amended provision makes it explicitly clear that the word carried qualifies the owner of goods or his representative".

17. Therefore in our considered opinion, the above said finding of the Tribunal below does not call for any interference by this Court. In view of the same the arguments advanced by the Learned Counsel for the Insurance Company that the claimant was travelling as unauthorized passenger in the goods vehicle cannot be countenanced.

18. Regarding quantum of compensation, the multiplier method adopted by the Tribunal in the instant case of permanent disability of 60% is justifiable and reasonable. This Court closely perused the medical records of the claimant and found that most of the injuries suffered by the claimant were grievous in nature, further PW2 doctor has categorically deposed that the right leg of the claimant turned numb because of the said accident, the said scenario cannot be easily ignored.

19. It is normal prudence that when a person at the age of 45 years is not in a position to walk and sit freely, his family will suffer a lot since the family had lost the sole bread winner as unhealthy and unfit to earn. Therefore the loss of dependency calculated by the Tribunal below by adopting multiplier method is just and proper and the amount awarded on that head is reasonable one. The amount of compensation awarded on other heads is also very very just and reasonable one in the considered opinion of this Court.

20. The Record reveals that in so far as the respondent 3 and 4 are concerned, this appeal had been already dismissed by an order dated 31.10.2014, by this Court in view of the memo filed by the appellant Insurance Company, not pressing the appeal against respondent 3 and 4.

***20(a). Appellant Insurance Company shall deposit the sums payable in keeping with this order together with interest, less sums already deposited, if any, with in a**

period of six weeks of the receipt of this Judgment. It will be open to first respondent to withdraw such sums on due application.

21. In view of the foregoing reason, there is no scope for this Court to interfere with the order passed by the Motor Accident Claims Tribunal hence, this appeal fails and the same is hereby dismissed. Consequently, connected miscellaneous petition is closed. No cost.

vs

Sd/-
Assistant Registrar
Dated: 03/02/2018

*Amended as per order
dated 21-02-2018 made
in CMA.No.3292 of 2013

Sd/-Assistant Registrar(CS II)
Dated: 13/03/2018

//True Copy//

Sub Assistant Registrar

To

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|--|---|
| 1. The Motor Accidents Claims Tribunal,
Sub Court,
Rasipuram. | To be Substituted to
Order already
Despatched on 09/02/18 |
| 2. The Section Officer,
V.R. Section, High Court,
Madras-104. (2 copies) | |

+1cc to M/s.Ma.P.Thangavel, Advocate Sr.No.13423

C.M.A.No.3292 of 2013
and
M.P.No.1 of 2013

AK(CO)
sm:5.2.2018
GN(13/03/2018)

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