



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2017

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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD)No.402 of 2011

and

M.P(MD)No.1 of 2011

G.Mani

... Appellant/
1st Respondent

Vs.

1. C.Palanichamy

... 1st Respondent/
Petitioner

2. The Branch Manager,
New India Assurance Co. Ltd.,
853/1, Nehruji Street,
Theni,
Theni District.

3. The Tamil Nadu State Transport Corporation
(Madurai Division IV), Dindigul,
represented by its
Managing Director,
Dindigul.

... Respondents 2and3/
Respondents 2and3

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.09.2009 made in M.C.O.P.No.44 of 2008 on the file of the on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate Court, Theni.

For Appellant : Mr.A.K.Baskarapandian

For Respondents : Mr.G.Kasinathadurai for R.1

Mr.M.Prakash for R.3
No appearance for R.2

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**JUDGMENT**

This Civil Miscellaneous Appeal has been filed by the appellant/owner of the offending vehicle, against the award dated 15.09.2009 passed in M.C.O.P.No.44 of 2008 by the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Theni.

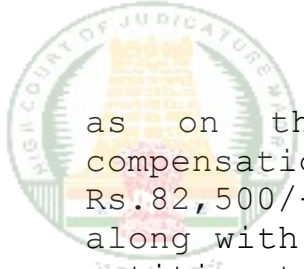
2. Facts-in-nutshell for the disposal of this appeal, are as follows:

2.1. On 04.03.2001, the first respondent/claimant, aged about 45 years, working as Driver in the third respondent-Transport Corporation, was driving the bus bearing Registration No.TN-57-N-0338 from Kumuli to Periyakulam in a cautious manner by following the rules and regulations and while he was proceeding on Theni - Periyakulam in south-north direction near Annanji Diversion, a Mahindra Van bearing Registration No.TN-60-A-2923 belonging to the appellant insured with the second respondent-Insurance Company was driven by its driver in a rash and negligent manner and dashed against the bus and caused the accident, due to which, the first respondent/claimant sustained injuries all over his body. Immediately thereafter, he was taken to Theni Government Hospital and took treatment as an inpatient between 04.03.2001 and 08.03.2001. In this regard, a case in Cr.No.92 of 2001 was registered by Allinagaram Police Station against the driver of the appellant. Therefore, the first respondent/claimant filed the claim petition claiming a sum of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only).

2.2. The second respondent-Insurance Company filed the counter statement denying all the averments stated in the claim petition and prayed for the dismissal of the claim petition. According to the appellant/owner of the offending vehicle and the second respondent-Insurance Company, the accident did not occur as alleged by the first respondent/claimant and the accident occurred only due to the rash and negligent driving of the first respondent/claimant and in any event, the compensation claimed by the first respondent/claimant is excessive.

2.3. Before the Tribunal, on the side of the first respondent/claimant, he examined himself as P.W.1 and P.W.2 and P.W.3 - Doctor were examined and Exs.P.1 to P.13 were also marked. However, neither oral nor documentary evidence was let in on the side of the respondents.

2.4. On contest, the Tribunal, considering the pleadings, oral and documentary evidence let in on either side, more particularly, the evidence of P.W.1 and Exs.P.1 - F.I.R filed against the driver of the offending vehicle; P.4 - Motor Vehicle Inspector's report and P.5 - judgment of criminal Court, found that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle. The appellant/owner of the offending vehicle fastened the liability on the appellant/owner of the offending vehicle as well



as on the second respondent-Insurance Company to pay the compensation jointly and severally and awarded a sum of Rs.82,500/- (Rupees Eighty Two Thousand and Five Hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

2.5. Aggrieved over the same, the appellant/owner of the offending vehicle, has filed the present appeal.

3. The learned Counsel for the appellant/owner of the offending vehicle submitted that the Tribunal erred in fixing entire negligence on the driver of the appellant and that the Tribunal ought to have fixed contributory negligence on the first respondent/ claimant also. Further, he submitted that the first respondent/ claimant sustained only simple injuries as per Ex.P.3 - Wound Certificate and that the disability assessed by the Doctor is on the higher side.

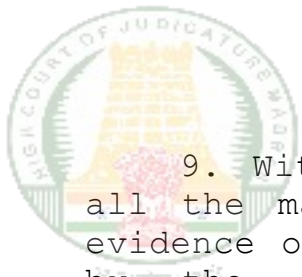
4. On the contrary, the learned Counsel for the first respondent/claimant supported the award of the Tribunal and prayed for the dismissal of this appeal.

5. Heard the learned Counsel for the appellant/owner of the offending vehicle; learned Counsel for the first respondent/claimant and the learned Counsel for the third respondent-Transport Corporation and perused the materials available on record. There is no representation on behalf of the second respondent-Insurance Company.

6. The Tribunal, based on the evidence of P.W.1 and also taking into account Exs.P.1 - F.I.R filed against the driver of the offending vehicle; P.4 - Motor Vehicle Inspector's report and P.5 - judgment of criminal Court, rightly held that the accident occurred only due to the rash and negligent driving of the driver of the appellant/owner of the offending vehicle and therefore, fastened the liability on the appellant/owner of the offending vehicle as well as on the second respondent-Insurance Company to pay the compensation jointly and severally.

7. The appellant/owner of the offending vehicle has not brought out any material to show that the first respondent/claimant is also equally responsible for the accident and also failed to prove his case that the Tribunal ought to have fixed the liability equally on both the drivers of the vehicles of the appellant as well as the third respondent.

8. Therefore, this Court holds that the Tribunal rightly held that the accident occurred only due to the rash and negligent driver of the appellant/owner of the offending vehicle and accordingly, the finding of the Tribunal with regard to negligence cannot be interfered with and the same is confirmed.



9. With regard to the compensation, the Tribunal considered all the materials available on record and also appreciated the evidence of P.W.3 - Doctor, who assessed the disability sustained by the first respondent/claimant and rightly awarded the compensation to the first respondent/claimant. The amounts awarded by the Tribunal under various heads, viz., a sum of Rs.42,000/- (Rupees Forty Two Thousand only) towards 42% partial permanent disability; a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards pain and sufferings; a sum of Rs.13,500/- (Rupees Thirteen Thousand and Five Hundred only) towards loss of income; a sum of Rs.500/- (Rupees Five Hundred only) towards transportation charges; a sum of Rs.1,000/- (Rupees One Thousand only) towards extra nourishment; a sum of Rs.500/- (Rupees Five Hundred only) towards medical expenses, are reasonable. In the opinion of this Court, there is no reason to interfere with the award of the Tribunal as the compensation awarded by the Tribunal is a just compensation.

10. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the award dated 15.09.2009 passed in M.C.O.P.No.44 of 2008 by the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Theni. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal
Theni.

Copy to

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.K.Baskarapandian, Advocate Sr.No.16457

+1cc to Mr.G.Kasinathadurai, Advocate Sr.No.16292

+1cc to Mr.M.Prakash, Advocate Sr.No.16539

rsb

vb/sv/mms/sar3/27.04.2017/4p/6c

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