

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.1537 of 2006

The Divisional Manager,
National Insurance Co. Ltd.,
Division-2, Lalbagh Mission Road,
Sathi Complex, Bangalore-27. Appellant

Versus

1. Muniappa

2. Syed Waheed Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree made in M.A.C.T.O.P.No.61 of 2002 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Krishnagiri dated 11.02.2004.

For Appellant : Mr.M.Krishna Moorthy

For Respondents : Mr.R.Selvam, (for R1)

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree made in M.A.C.T.O.P.No.61 of 2002 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Krishnagiri dated 11.02.2004.

2. The brief facts leading to the claim application are as follows:

On 10.08.2000 at about 08.00 p.m., when the claimant was returning to Oddarpalayam village after loading cabbage in the lorry and the said lorry was also proceeding slowly. At that time, the bus bearing Registration No.TN-29-W-7999 belonged to the Second respondent which came from Hosur to Krishnagiri was driven by its driver in a rash and negligent manner and dashed the lorry from behind. As a result, the claimant sustained multiple grievous injuries, including loss of six teeth and fracture on left hand. The claimant claimed a sum of Rs.2,50,000/-(Rupees Two Lakhs and Fifty Thousand Only) as compensation under the various heads.

3. The appellant/National Insurance Company has denied the involvement of the bus in the said accident and stated that only because of the negligent act of the claimant, the accident had occurred. The claimant without noticing the oncoming vehicle, crossed the N.H. Road suddenly and inspite of the steps taken by the driver of the bus to avoid the accident, but due to the carelessness of the claimant driver of the bus could not control the bus and dashed against the claimant. The other aspects regarding the non production of valid driving license by the driver of the said bus at the time of the accident and the sum claimed by the petitioner and the details furnished by him regarding his age, occupation, status and health condition were also denied by the Appellant/Insurance Company.

4. The Tribunal after analyzing the evidence and documents has given a finding that the driver of the bus/ second respondent is responsible for the accident. Hence, the appellant/Insurance Company with whom the second respondent bus is insured, is liable to pay the compensation. The Tribunal has also analyzed the nature of the injury sustained by the petitioner and the period of treatment, disability sustained by him and other related aspects and expenses incurred by him and awarded a sum of Rs.2,05,800/- as compensation under various heads. Aggrieved against the judgment, the appellant/Insurance Company has preferred this appeal.

5. In the grounds of appeal, the appellant has denied the liability to pay compensation as the bus bearing Registration No.TN-29-W-7999 was not insured with this appellant. It is also stated that the policy copy which is marked as Ex.A2 relating to the vehicle bearing Registration No.TN-29-1199 whereas, the Registration number of the bus involved in the accident is No.TN-29-W-7999. Further, the sum awarded by the tribunal as compensation and various heads are not at all reasonable, which are not supported by proper evidence and documents.

6. Heard both sides and perused the records.

7. The appellant has argued that the vehicle involved in the accident, was not insured with this respondent. It is also argued that Ex.P2 is a policy in which the vehicle number has been mentioned as TN-29-1199. On a perusal of the FIR, the registration number of the bus has been mentioned as No.TN-29-W-7999. Hence, it is the argument of the appellant that the vehicle bearing Registration No.TN-29-W-7999 is not insured with them.

8. Since, the registration number of the vehicle mentioned in the policy differs from the FIR, it is for the petitioner to prove before the tribunal about the exact vehicle which caused

the accident. Without ascertaining the vehicle involved in the said accident, the appellant Insurance Company cannot be made liable to pay any compensation.

9. In view of the fact that the registration number of the alleged vehicle is differ from the FIR and the policy Ex.P2, this Court is of the view that instead of dismissing the appeal, it would be appropriate to remand back the MCOP No.61/2002 to the tribunal for ascertaining the involvement of the vehicle by giving an opportunity to the claimant and the Insurance Company. Hence, the tribunal is directed to consider the said claim petition afresh and dispose of the same by properly assessing the involvement of the carrier vehicle in the said accident. This court is not interfering with the sum awarded by the tribunal.

10. In the result, the Civil Miscellaneous Appeal is disposed of by setting aside the Judgment and Decree made in M.A.C.T.O.P.No.61 of 2002 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Krishnagiri dated 11.02.2004 and remanded back to the Tribunal for a fresh consideration after giving due opportunity to the claimant and the Insurance Company. The Tribunal is also directed to dispose of the said claim petition at the earliest by considering the year of the claim petition, which is of the year 2006. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

at/gbi

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal
(Subordinate Judge) सत्यमेव जयते
Krishnagiri.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.74459

+1 cc to Mr.R.Selvam, Advocate, S.R.No.74954

CMA.No.1537 of 2006

(CO)
SSM(07/11/2019).