

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.10.2018

CORAM:

THE HONOURABLE Mrs. JUSTICE S. RAMATHILAGAM

C.M.A.No.2036 of 2005

New India Assurance Co. Ltd.,
Bharathi Road,
Cuddalore.

... Appellant

Versus

1.Ramiah (died)
2.Rajendran
3.Radhabai
4.The Divisional Manager,
United India Insurance Co.Ltd.,
Nethaji Road,
Manjakuppam,
Cuddalore.

5.Shanthi
6.Natesh Kumar
7.Babu
8.Rajalakshmi
(Respondents 5 to 8 b/r as the LRs
of the died 1st respondent vide Ct.
Order dated 30.10.2018 made in
CMP.No.7444/18 in CMA.No.2036/05)

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.12.2004 made in M.A.C.T.O.P.No.1308 of 2002 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Cuddalore.

For Appellant : Mr.P.G.Padmanabhan

For R1 : Mr.R.Muralidharan

For R4 : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 14.12.2004 made in M.A.C.T.O.P.No.1308 of 2002 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Cuddalore.

2. The facts of the case are as follows :

On 22.07.2002 at about 17.45 hours,, when the claimant was travelling as passenger in the bus bearing Registration No.TN-32-B-0959, at that time, a lorry bearing Registration No.TN-31-V-5625, came in the opposite direction in a rash and negligent manner at high speed, hit against the bus to the backside and rashed. As a result, the claimant's right hand upto his shoulder was cut off and immediately he was given treatment. Both the drivers were responsible for the said accident and the claimant has claimed a sum of Rs.15,00,000/- as compensation.

3. The appellant/Insurance Company, in the counter statement, has denied the mode of accident and stated that the claimant and also the insurance of the vehicle bearing Registration No.TN-32-B-0959. The other aspect regarding the claim of Rs.15,00,000/- and the age, monthly income, occupation, nature of injury sustained by the claimant are very much denied.

4. The Tribunal, after analyzing the evidence and documents placed before it, has concluded that the accident had occurred only due to the rash and negligent driving on the part of the driver of the lorry and arrived the compensation, based on the evidence and documents and awarded a sum of Rs.7,83,305/-. Aggrieved against the said award, the appellant/Insurance Company has preferred this appeal.

5. In the grounds of appeal, it has been stated that the finding of the Tribunal is fixing the liability only on the appellant, while the claimant who was travelling on the back seat of the bus and kept his hand outside the window is also responsible for the accident. The Tribunal ought to have considered atleast the claimant has equally contributed to the accident by his negligent travel in the said bus. The evidence of R.W.1 and Ex.R2 were not properly considered and the evidence of P.W.1 who is interested witness was very much appreciated by the Tribunal. The sum claimed by the claimant is also excessive and the compensation arrived by taking his income at Rs.3,000/- and the sum awarded under various heads and also stated as excessive. On the whole, the sum of Rs.7,83,305/- awarded by the Tribunal is highly excessive.

6. Heard both sides and perused the materials available on record.

7. The appellant/Insurance Company has argued that the claimant was travelling in the bus as a passenger, who was seating at the back side keeping his hand out side of the bus, hence he invited the accident by his negligence. Since the other passengers who travelled in the said bus, did not sustained any injuries or any damages, in the said accident. Therefore, it is the argument of the appellant that the tribunal without considering these aspects has awarded the compensation.

8. On a perusal of the Judgment, it is seen that P.W.1 was examined before the Tribunal, who deposed that while the bus was proceeding from north to south, at that time, the lorry bearing Registration No.TN-31-V-5625 came in the opposite direction in a rash and negligent manner and hit at the right side of the bus and the claimant sustained severe injuries on his right hand and the right hand was also cut off and thrown away. On perusal of the FIR, it also reveals that the accident occurred only due to the rash and negligent driving on the part of the driver of the lorry. The Motor Vehicles Report also reveals the fact that the lorry got damages due to the rash and negligent driving and hit at the back side of the bus and bus also got damages.

9. Before the Tribunal, R.W.1 and R.W.2 also examined, who also deposed the same that the accident occurred only due to the rash and negligent driving on the part of the driver of the lorry. The appellant herein has also argued before the tribunal that if the claimant has kept his hand inside the bus, he would have avoid the accident, hence it is clear that the accident had occurred only due to the rash and negligent driving on the part of the driver of the lorry. Therefore, the tribunal has fixed by the liability on the said lorry.

10. The Tribunal is very much observed that the injured person had sustained severe injuries which very much proved by Ex.P4 wound certificate. Ex.P4 reveals the fact that the injuries are grievous in nature and the right hand was cut off and thrown away and other documents relating to the period of treatment and nature of treatments proved that he was given treatment as inpatient from 23.07.2002 to 12.08.2008 and history of treatment was also filed before the Tribunal as Ex.P6. The other documents relating to the medical bills, the disability certificate issued filed by P.W.2, he has also mentioned the disability sustained at 94%. Hence, the injury sustained by him is a grievous injury which resulted the disability of 94%.

11. With regard to the occupation, the claimant who was working as Maistry in the brick chamber, the Tribunal has fixed monthly income at Rs.3,000/- against the claim made as Rs.6,000/-. The tribunal by taking into considering the injuries sustained by the claimant, has awarded a sum of Rs.3,00,000/- for permanent disability and Rs.4,00,000/- for future loss of earning capacity because of the permanent disability.

12. The Tribunal, after verifying the age, occupation and disability had determined the loss of income and awarded the compensation which is very much reasonable and proper. This Court is of the opinion that the said amount are reasonable for disability sustained to the claimant. This court is unable to see any reason to interfere with the findings of the Tribunal. Hence, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

lpp

To

1. The Motor Accident Claims Tribunal
(Principal Subordinate Judge), Cuddalore.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.P.G.Padmanabhan , Advocate SR.No. 74432
+1cc to Mr.R.Muralidharan , Advocate SR.No. 75393

CMA.No.2036 of 2005

A.SK(18/07/2019)

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