

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.2312 of 2005

M/s. United India Insurance,
Company Limited,
Karaikudi.

... Appellant/2nd respondent

Versus

1. Mr.R.Anthony Raj,
2. Mrs.N.Rajamani,

... Respondents/
petitioner & 1st respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 29.09.2003 made in M.A.C.T.O.P.No.515 of 1998, on the file of the Motor Accident Claims Tribunal (First Additional Sub-Judge) Villupuram.

For Appellant : Ms.V.Renuka Devi for
Mr.J.Raja Kalifulla

For Respondents: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 29.09.2003 made in M.A.C.T.O.P.No.515 of 1998, on the file of the Motor Accident Claims Tribunal (First Additional Sub-Judge) Villupuram.

2. The brief facts of the case are as follows :-

On 29.06.1993, the claimant started his trip from Madras to Madurai with a load of wax barrels, by driving the lorry bearing Registration No.TN-04-B-5155. At about 4.00 hours on 29.06.1993, the lorry was proceeding from North to South in the National Highways No.45, at that time another lorry bearing Registration No. TN-63-3893, driven by its driver in hectic speed and in a rash and negligent manner its extreme right,

dashed against the lorry, which was being driven by the claimant. Due to the said accident, the claimant, who is the lorry driver, sustained severe injuries. A criminal case was registered against the driver of the lorry bearing Registration No.TN-63-3893, the injured driver claimed a sum of Rs.2,00,000/- as compensation.

3. The Appellant/Insurance Company, in the written statement, has denied the mode of accident. It is also stated that it is only the claimant, who alone is responsible for the accident because he had driven his vehicle without observing the traffic rules and regulations and dashed against the lorry bearing Registration No.TN-63-3893 and caused fatal injuries to the driver of the said lorry. The other aspects viz., the claim made by the claimant, age, occupation were also denied.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that for the said accident the first respondent being the owner, and the second respondent, being the insurer, are liable to pay the compensation as claimed by the claimant. Regarding the quantum, the tribunal has assessed the evidence placed before it, with regard to the injury, income, disability and occupation of the claimant, awarded a sum of Rs.40,000/- as compensation. Aggrieved against the said award, the Insurance Company has preferred this appeal.

5. Heard the learned counsel for the appellant and no representation on behalf of the respondents and perused the documents available on record.

6. In the grounds of appeal, it has been stated that the claim petition ought to have been dismissed for the reason that the owner and insurer of the lorry driven by the claimant were not impleaded as necessary parties. While noticing the mode of accident, the tribunal ought to have given a finding that both the lorry drivers are responsible for the accident. Hence, the finding is not justified. The other aspects regarding the nature of injuries sustained by the claimant, the tribunal has not considered the disability certificate issued by the Doctor, who treated the claimant. The sum determined by the tribunal is very much excessive.

7. The appellant has further argued that the vehicles involved in the accident both being lorries, both driver of the lorries are responsible for the accident. Whereas the Tribunal has fixed the liability on the respondents alone. Further, when the negligence is contributed by the claimant, the owner of the said lorry and the insurer of that vehicle were not impleaded as parties. Hence, it is argued that when the claimant is also responsible for the accident, the claim petition ought to have

been dismissed, in view of the fact that the owner and insurer of the said lorry were not impleaded as necessary parties.

8. On a perusal of the records, it is observed that the claimant, who drove the lorry bearing Registration No. TN 04-B-5155 had not contributed to the accident, further it cannot be said that at the time of accident, he drove the lorry in a rash and negligent manner, as the vehicle was loaded with Wax barrels. It is also observed that FIR was registered against driver of the lorry bearing registration No.TN-63-3893. It is also deposed by the claimant that he is the owner of the said lorry, driven by him at the time of accident. On the other hand there is no evidence or document let in by the respondents contradicting the evidence of the claimant in respect of negligence, hence, the liability fixed on the appellant/Insurance Company is correct. It is also argued by the appellant that the sum awarded by the Tribunal as compensation is also very much on the higher side, when there is no grievous injuries or any document produced for the treatment taken by the claimant. It is seen from the records, P.W.2-Doctor, namely Ravindran was examined before the Tribunal and he has issued Ex.A2-disability certificate mentioning disability at 70%.

9. It is also seen from the records that the claimant has not filed any document relating to nature of injuries sustained by him and history of treatment by way of discharge summary before the Tribunal. Hence, the Tribunal has very much observed that there is no Accident Register, wound certificate and discharge summary, to establish the nature of injury but only the evidence of P.W.2 was available before the Tribunal in which the disability has been assessed at 70%. When the accident is admitted, the negligence on the part of the other vehicle is also proved. In spite of disability stated at 70%, the Tribunal has awarded only a sum of Rs.40,000/- as compensation.

10. In the absence of any relevant document in respect of nature of injuries, period of treatment and disability sustained by the claimant before the Tribunal, the sum awarded by the Tribunal at Rs.40,000/- by considering the nature of injuries and disability sustained by the claimant is very much reasonable. Hence, no interference is called for in the order of the Court below. The order of the Tribunal is confirmed. This Civil Miscellaneous Appeal is dismissed. No costs.

11. The appellant/Insurance Company is directed to deposit the entire award amount as awarded by the tribunal, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such

deposit being made, the Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nsd/lpp

To

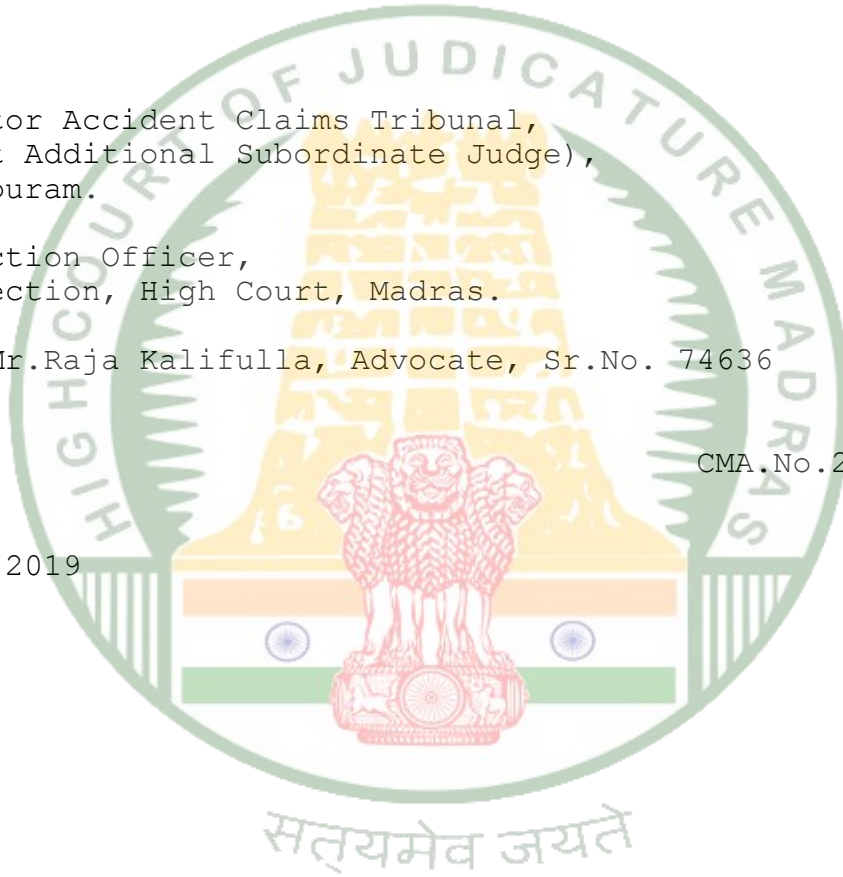
1. The Motor Accident Claims Tribunal,
(First Additional Subordinate Judge),
Villupuram.

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

+1 cc to Mr.Raja Kalifulla, Advocate, Sr.No. 74636

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SPD(CO)
CSL/17.06.2019



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