

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2018

CORAM:

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.3887 of 2005
and C.M.P.No.19218 of 2005
and C.M.P.No.1793 of 2006

The Branch Manager,
National Insurance Co.Ltd.,
305, Bangalore Road,
Krishnagiri,
Dharmapuri District

.. 2nd respondent/ Appellant

Vs.

1.Raja @ Antony Raja
2.K.A.Madalaimuthu

..Petitioner/1st Respondent

..1st respondent/2nd respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 30.09.2004 made in M.A.C.T.O.P.No.1942 of 2002 on the file of the Motor Accident Claims Tribunal (First Additional District Court). Dharmapuri at Krishnagiri.

For Appellant : Mr.S.Vadivel

For Respondents : Mr.M.Thomas Aquinas

JUDGMENT

The appellant/National Insurance Company has preferred this appeal against the order and decree dated 30.09.2004 passed in M.C.O.P.No.1942 of 2002 on the file of the Dharmapuri District Motor Accident Claims Tribunal at Krishnagiri District (First Additional District Court).

2. The facts in the claim application are that the first respondent was working as a 'collie' under the second respondent who was owner of the vehicle. The first respondent, on that day, after purchase of cows, loaded the same in a Tempo bearing Registration Number TN 23 A 8577 from Kaveripattinam to Bargar

on 19.10.2002 at about 3.00p.m. When the said Tempo, driven by its driver was in a rash and negligent manner and when the vehicle was nearing Krishnagiri-Burgar Main Road, hit against the sons on the road and then kept side due to the said act of the driver, and the person driving the Tempo along with the first petitioner sustained severe injuries all over the body and this accident occurred only due to the rash and negligent driving by the driver of the said Tempo, which was insured with the second respondent who is the appellant herein.

3. The first respondent/claimant claimed a sum of Rs.5,00,000/- as compensation. In the counter statement, the appellant/Insurance Company denied the liability by stating that the Tempo vehicle is a goods carrier, whereas it is used the first respondent/petitioner and others which is unauthorized against the policy conditions. Further, the appellant/Insurance Company also denied the fact that the petitioners were driving after purchase of cows and allowed the same in the Tempo.

4. The Tribunal, after analyzing the evidence and documents placed before it, arrived at a finding by considering the age of the injured first respondent/petitioner and his income and by considering the medical expenses, the disability, the treatment underwent by the first respondent, awarded a sum of Rs.1,87,077/-. While fixing the liability on the Insurance Company, the Tribunal has given a finding that though the passengers in the goods vehicle/Tempo have contravene the condition of the policy and travelled in it, they cannot be denied the compensation and the Tribunal gave a finding that the appellant/Insurance Company has to pay the compensation to the claimant. Aggrieved against the same, the appellant/Insurance Company has preferred this appeal apart from the quantum awarded by the Tribunal.

5. Heard both sides.

6. On the side of the appellant/Insurance Company, it is argued that the claimant was travelling as passenger in the goods vehicle, which is against the policy conditions and hence, they are not liable to pay any compensation.

7. Regarding the quantum, the appellant/Insurance Company has vehemently argued that the Tribunal has not considered the negligence on the part of the driver who took the claimant as a passenger in the goods vehicle.

8. The appellant's counsel also argued that when the claimant suffered only 25% of the disability, the sum awarded by the Tribunal at Rs.1,27,500/- by applying the multiplier system,

is not proper and in the absence of any documents, the age taken by the Tribunal at 32 is also improper. On the whole, the appellant/Insurance Company has argued that the sum awarded under the head pain and suffering, attender charges, etc., are all excessive and exorbitant.

9. However, it is the stand of the claimant that the Tribunal, while considering the disability suffered by him and also by verifying the details and taking into account the monthly income of the first respondent/claimant and age as 32, it is very much true that at the time of the accident, he was employed as a coolie and his income was properly taken by the Tribunal as Rs.2500/- against the claim of Rs.5,000/-. It was also further observed that the claimant sustained 4 injuries including fracture, for which, he was treated and Ex.P9 wound certificate also reveals that the fact that he sustained 30% disability due to the injuries and it is grievous injury, though the disability certificate reveals 30%, the Tribunal has taken only 25% and hence, by taking consideration the age of the claimant, the income multiplier applied by the Tribunal at 17, is also quite proper. Further, in respect of the medical expenses that has been assessed by the Tribunal, while perusing the relevant document, it is seen that the claimant was under treatment as in-patient from 19.10.02 to 30.10.02. Hence, it is observed that the claimant was under treatment and the Tribunal found that he would have taken treatment for atleast 3 months because of the injuries sustained by him. Therefore, the loss of income was also properly assessed by the Tribunal, by taking his monthly income at Rs.2,500/- the Tribunal awarded the compensation at Rs.7,500/-.

10. By taking into consideration of aspects including the age and income of the claimant, the disability assessed by P.W.2 Doctor and also Ex.P-9 wound certificate, the sum awarded by the Tribunal at Rs.1,87,077/- is quite proper and appellant/Insurance Company was directed to pay the compensation to the claimant.

11. The appellant/Insurance Company has argued that there is a violation of policy condition when the claimant travelled as a passenger in a goods vehicle, and their contention that they are not liable to pay the amount, it is hereby directed that it can compensate the petitioner by paying the compensation amount and recover the same from the first respondent before the Tribunal, without filing E.P. proceedings.

12. No interference is made regarding the award of interest at the rate of 9% per annum.

13. With the above observations, the Civil Miscellaneous Appeal is disposed of and the award of the Tribunal including the liability fixed on the appellant/Insurance Company is confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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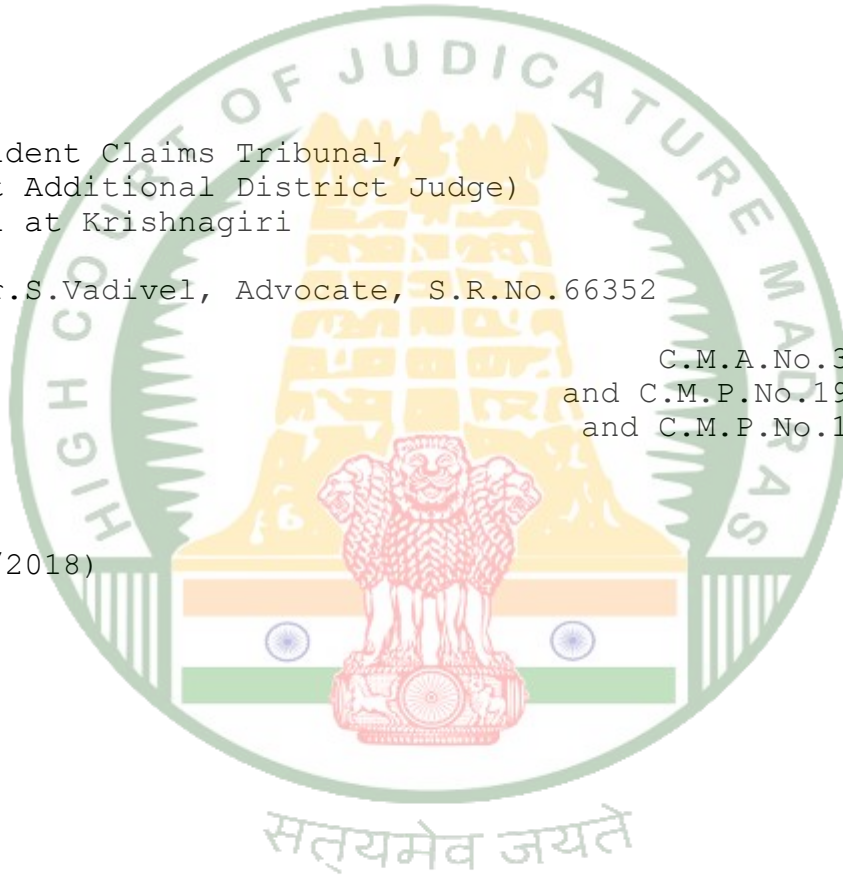
To

Motor Accident Claims Tribunal,
(The First Additional District Judge)
Dharmapuri at Krishnagiri

+1cc to Mr.S.Vadivel, Advocate, S.R.No.66352

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SJ(CO)
GSP(12/11/2018)



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