

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.938 of 2007

and

M.P.No.1 of 2007

New India Assurance Company Limited,
Tambaram.

Appellant/Respondent 2

Versus

1. T.Ranganathan ..Respondent/Petitioner

2. Shanmugam ..Respondent/Respondent I

(The 2nd respondent herein was the 1st respondent before the Tribunal and he remained exparte before the Tribunal. Hence, summons to 2nd respondent herein may be dispensed with)

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 31.07.2006 made in M.C.O.P.No.1 of 2000 on the file of the Motor Accident Claims Tribunal, (Sub Judge) Chidambaram.

For Appellant : Mr.S.Manohar
For Respondents : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 31.07.2006 made in M.C.O.P.No.1 of 2000 on the file of the Motor Accident Claims Tribunal, (Sub Judge) Chidambaram.

2. The facts of the case are as follows :

On 17.04.1999, at about 10.30 hours, when the petitioner who is the driver of the Government bus bearing Registration No.TN 32 N 1021 was proceeding from Chidambaram to Chennai, a lorry bearing Registration No. TN 22 B 9396 which came in the opposite direction in a rash and negligent manner and inspite of the driver of the bus stopped the vehicle at Thiruvidenthai, the said lorry dashed against the bus and caused damages to the bus as well as injuries to the bus driver, the petitioner herein,

which resulted disability to the claimant, hence he claimed a sum of Rs.2,00,000/- as compensation before the Tribunal.

3. The 1st respondent was set exparte before the Tribunal.

4. The 2nd respondent/New India Assurance Company has filed a counter statement denying the facts stated by the claimant regarding the accident and rash and negligent driving on the part of the driver of the lorry. It is also stated that the petitioner ought to have impleaded the owner of the bus as a necessary party. The other aspects regarding the income, age and the earning capacity and the amenities and the sum claimed by the claimant were very much opposed by the 2nd respondent.

5. The Tribunal, after analyzing the evidence and documents placed before it, had given a finding that the accident had occurred due to rash and negligent driving on the part of the lorry driver and it is also observed that the Truck crashed into the bus and the bus got damaged and the petitioner who was a driver also sustained severe injuries and the Tribunal has also awarded a sum of Rs.60,000/- as total compensation, in which a sum of Rs..50,000/- for the loss of earning capacity and Rs.10,000/- for the shock and pain . Aggrieved against the award passed by the Tribunal, the 2nd respondent/Insurance Company has referred this appeal.

6. In the grounds of appeal, the appellant/the 2nd respondent Insurance Company has stated that it is the gross negligence on the part of the claimant/driver, who had driven the bus in a rash and negligent manner at the time of accident. In the absence of eye witness, the findings of the Tribunal with regard to the negligence on the part of the driver of the lorry is not justified. The Tribunal ought to have fixed the negligence at the rate of 50% on both the vehicles, since both the vehicles are cause for the accident. The sum arrived for disability at 15% in the absence of any relevant document is also not justified. The determination of the Tribunal for awarding Rs.50,000/- for loss of earning power is also on the higher side. Since the petitioner is continuing his work as a driver, for the pain and suffering, a sum of Rs.10,000/- awarded is also stated as excessive. The award of interest at 8% is also against the prevailing bank rate of interest.

7. Heard the appellant side. No representation for the 1st respondent. Perused the documents available on record.

8. On a perusal of records and award passed by the Tribunal, it is observed that PW1/claimant was eye witness to the occurrence and the other witness is the driver of the 1st respondent Truck. But the 1st respondent was not examined.

Hence, the evidence of the eye witness as PW1 in the said case was examined by the Tribunal. It is also admitted by the 2nd respondent that the Truck collided with the bus. In the absence of any contrary evidence, to that of the PW1 who is the eye witness and also by verifying the relevant documents and by perusing Ex.A1 FIR, the negligence is fixed on the part of the Lorry is very much reasonable and further, the finding of the Tribunal for calculating the compensation by considering the occupation of the claimant as driver who at the time of the accident was driving the bus is properly considered by the Tribunal. Especially, by taking into consideration of the fact that the driver was subsequently employed and continuing his occupation as driver, restricted his loss of income as Rs.50,000/- against Rs.1,14,048/- is quite very much reasonable.

9. It is also observed that the claimant had sustained grievance injury and also Ex.A9 is the disability certificate produced before the Tribunal by PW2. Hence, the Tribunal has properly assessed the disability after verifying the nature of injury that has been stated by the claimant and also the evidence of Doctor, PW2 and the sum arrived by the Tribunal at Rs.50,000/- is not on the higher side and it is very much reasonable. Further, the sum awarded for pain and sufferings is also very much reasonable. Hence, in total, the sum calculated by the Tribunal as loss of earning power and the sum awarded for pain and suffering is very much reasonable and in view of the said findings, the award passed by the Tribunal and the finding of the Tribunal does not require any interference.

9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

10. Accordingly, the appellant/Insurance Company is directed to deposit the entire award amount by the Tribunal, with interest and costs, 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.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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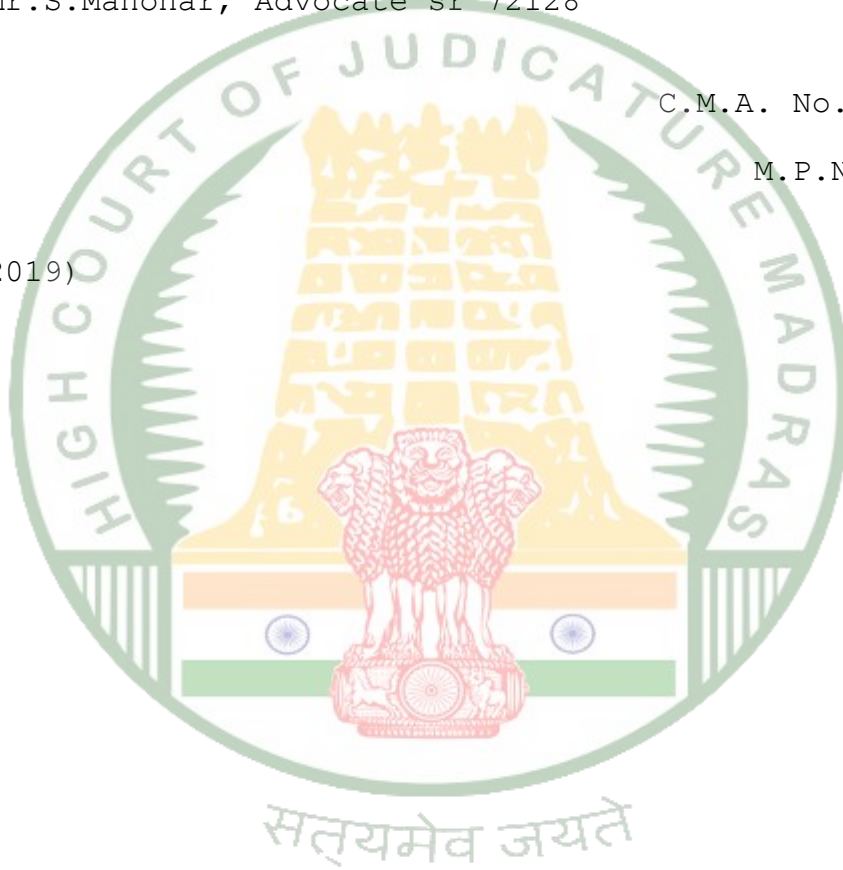
1. The Motor Accident Claims Tribunal
Sub Judge, Chidambaram.

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

+1 CC to Mr. S. Manohar, Advocate sr 72128

C.M.A. No. 938 of 2007
and
M.P. No. 1 of 2007

VBA (CO)
SP (03/01/2019)



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