

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.Nos.858 of 2006

and

CMP.No.3349 of 2006

The New India Assurance Co.Ltd.,
Parimalam Complex,
No.11, E.V.N.Road,
Namakkal.

... Appellant/2nd Respondent

Versus

1.Mani ...1st Respondent/Petitioner

2.Velmani ...2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the order and decree dated 29.04.2005 made in M.A.C.T.O.P.No.1257 of 2004 on the file of the Motor Vehicles Accident Claims Tribunal and Fast Track Court III, Namakkal.

For Appellant : Mr.S.Ramalingam

For Respondents: M/s.N.Umapathi

J U D G M E N T

This civil miscellaneous appeal has been preferred against the judgment passed in M.A.C.T.O.P.No.1257 of 2004 dated 29.04.2005, on the file of the Motor Vehicles Accident Claims Tribunal and Fast Track Court III, Namakkal.

2.The brief facts leading to the claim application in respect of MCOP.No.1257 of 2004 are as follows:-

On 16.05.2002, the injured petitioners and other persons were engaged as coolie for loading sand in the vehicle bearing Registration No.T.N.37 S.5121. After loading the vehicle, while they were travelling in the said lorry on 17.05.2002, at about 9.30 am, on Trichy to Namakkal main road, near Meikkalnaickenpatty, the driver drove the vehicle at high speed in a rash and negligent manner and applied sudden break. As a

result, the lorry was capsized. Due to the said accident, the petitioner and other passengers were injured and one person died. The petitioner has filed a claim petition for a sum of Rs.5,00,000/- towards compensation.

3.The Insurance Company/second respondent before the Tribunal has stated in their counter statement that the driver driven the lorry in a normal speed at the time of accident, since the another lorry which was coming in the same direction, overtook the lorry, in which the petitioners and other passengers travelling. Unfortunately, the said lorry was capsized. Hence, there is no rash and negligent driving on the part of the driver of the said lorry as stated in the claim petition.

4.The Tribunal, upon analyzing the evidence and documents, has come to the conclusion that the said accident was occurred due to the rash and negligent driving on the part of the driver of the lorry, hence, respondents 1 and 2 are liable to pay compensation, who are the owner and insurer of the said lorry respectively and awarded compensation of Rs.1,71,885/- against the claim of Rs.5,00,000/-. Aggrieved by the said judgment, the Insurance Company has preferred this CMA to set aside the same.

5.In the grounds of appeal, the appellant has very much questioned the liability on the basis that whether the claimant travelled in the said lorry as a load men and if that being so, whether, the appellant is entitled for compensation. Further, it is stated that the multiplier adopted by the Tribunal is not reasonable and the disability fixed also excessive and the loss of income arrived at Rs.1,51,200/- by the Tribunal is not proper. On the whole, the total sum awarded at Rs.1,71,885/- is excessive.

6.It is seen from the records that R.W.1 who is working as accountant in Transport Corporation has deposed in his evidence that in the said lorry only three persons including the driver can travel and if more than three persons are travelled, it is against the policy conditions. The copy of the policy Ex.R2 was also filed before the Tribunal. The Insurance Company/appellant herein has stated that totally five persons were injured in the said accident and they travelled against the terms and condition of the policy. Therefore, the Insurance Company is not liable to pay compensation.

7.Per contra, R.W.1 & R.W.2 in their evidence has deposed that the said lorry was being used as load vehicle and the premium was also paid to carry load men and the policy was also taken for six persons/employees. Therefore, it is clear that in the said vehicle can carry maximum six load men/employees. The

Tribunal has also rightly observed the said aspects and concluded that the injured persons are entitled for compensation.

8.The Tribunal has observed that the claimant had sustained severe injuries and was under treatment for nearly 15 days and she was also a coolie and earning Rs.4,000/- per month. The Doctor who examined the claimant deposed before the Court that the person has sustained 35% disability and the disability certificate was also marked as Ex.P.7.

9.It is seen from the records that the claimant had sustained totally seven injuries, 1 to 4 are simple injuries and 5 to 7 are grievous in nature. By taking into consideration, the age of the claimant and the disability sustained by the claimant, the monthly income fixed by the Tribunal at Rs.2,250/- and calculated the loss of income at Rs.1,51,200/- by applying multiplier is found proper. Likewise, the sum awarded under other heads are also proper and reasonable. Hence, this Court is of the view that the award passed by the Tribunal is based on the evidence and document and the same are very much reasonable and proper and need not be interfered with and the appeal is liable to be dismissed.

10.In view of the above, the civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.Accordingly, the appellant/Insurance Company is directed to deposit the entire award amount, in respect of above Appeal as per the order of this Court, 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 claimants bank account through RTGS within one week thereon.

सत्यमेव जयते
s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

AT

To

1. The Motor Vehicles Accident Claims Tribunal,
Fast Track Court III, Namakkal

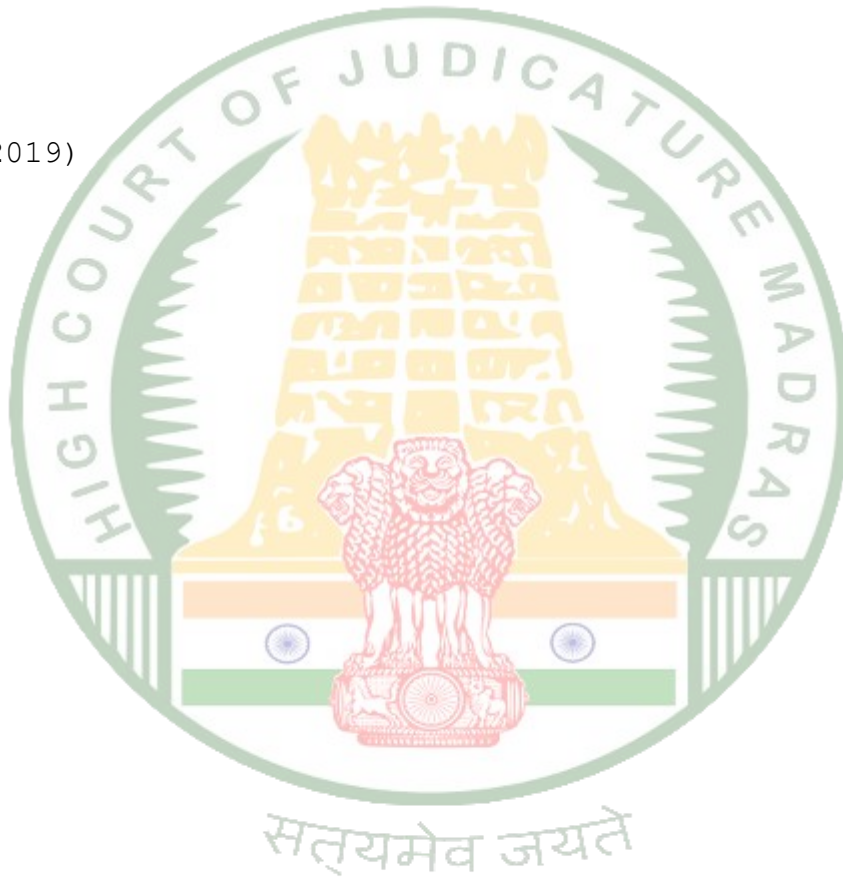
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1 CC to Mr.S.Ramalingam, Advocate sr 74178.

+1 CC to Mr.N.Manokaran, advocate sr 74110.

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SPD(CO)
SP(10/09/2019)



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