

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.08.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.No.1534 of 2018

and

CMP.No.12241 of 2018

National Insurance Company Limited,
2nd Floor, 81-D, Chetty Street,
Bus Stand Opposite,
Tiruchengode, Namakkal. .. Appellant /3rd Respondent

Vs.

1.P.Nambiyarajan1st Respondent/Petitioner
2.K.Murugesan
3.S.C.P.Illangovan ...2nd & 3rd Respondent/
1 & 2 Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of M.V.Act against the judgment and decree dated 26.04.2016 made in M.A.C.T.O.P.No.1522 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Tiruppur.

For Appellant : M/s.N.B.Surekha

For Respondents: Mr.K.Varadha Kamaraj (for R1)

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 26.04.2016 made in M.A.C.T.O.P.No.1522 of 2008 on the file of Motor Accident Claims Tribunal, Principal District Judge, Tiruppur.

2.The Appellant / Insurance Company is the third Respondent, 1st Respondent is Claimant/Petitioner and 2nd Respondent is the 1st Respondent, 3rd Respondent is 2nd Respondent in M.A.C.T.O.P.No.1522 of 2008, on the file of Motor Accident

Claims Tribunal, Principal District Judge, Tirupur. According to the 1st Respondent while he was travelling as Passenger in Bus bearing Registration No.TN-38-AR-5335 on 31.05.2008 at about 09.00. A.M. near Saralai at Perundurai to Kovai, NH-47 Main Road, the 3rd Respondent driving the Bus bearing Registration No.TN.38-AR-5335 rash and negligent manner to hit the Car bearing Registration No.TN-39-AL-4242 which was going in front of Bus, due to which the 1st Respondent suffered multiple grievous injuries. The 1st Respondent was 26 years at the time of accident and JCB Driver in Sri Lakshmi Earth Movers, Avinashi and earning Rs.8,000/- per month. He made claim of Rs.5,00,000/- as compensation. The 1st and 2nd Respondents are remained exparte.

3.The Appellant filed counter statement and denied various allegations made by the 1st Respondent and pleaded the accident not happened due to rash and negligent driving of the 2nd respondent and denied the age and income of the 1st Respondent and denied the injuries of 1st Respondent.

4.Before the Tribunal, the second respondent examined as PW1, Employer of 1st Respondent examined as PW2 and one Doctor Senthilkumar examined as PW3 and marked 9 Documents as Ex.P1 to Ex.P9. On behalf of Appellant, no one examined and no document marked.

5.The Tribunal considering the pleadings ,oral and documentary evidence and accepting the evidence of PW1 and as per EX.P1 (FIR) and Ex.P5 (Charge sheet) came to the conclusion that the accident occurred only due to rash and negligent driving of the driver of the 2nd Respondent and Vehicle was insured with the appellant because there is no contra evidence by appellant . hence the appellant and 3rd Respondent are liable to pay Compensation. The tribunal fixed the age of the 1st Respondent as 26 years on the basis of available Records and the tribunal fixed the income of the 1st Respondent as Rs.3000/- per month since the 1st respondent /claimant not filed any solid proof prove the income of the 1st Respondent. The 1st Respondent /Claimant sustained fracture in Right Hand and surgery was done took treatment in Lotus Hospital, Erode, Chennai and inpatient from 31.5.2018 to 3.6.2018 and to prove the injuries sustained by 1st Respondent/Claimant one Doctor examined and he assessed Disability 29.4% and the same reduced by 29% by tribunal and awarded total compensation of Rs.1,56,665/- with 7.5% interest as under:

Award by Tribunal

So.No.	Particulars	Amount
1.	Compensation for Disability 29% X 3000 :	Rs.87,000/-
2.	Loss of income	Rs. 9,000/-
3.	Transport	Rs. 2,000/-
4.	Extra-Nourishment	Rs. 5,000/-
5.	Damage to Clothes	Rs. 500/-
6.	Medical Expenses	Rs.28,165/-
7.	Pain and Suffering	Rs.25,000/-
TOTAL		Rs.1,56,665/-

6. Against the said award dated 26.04.2016 made in M.A.C.T.O.P.No.1522 of 2008, the present Civil Miscellaneous Appeal prepared by the appellant.

7. The learned counsel for the appellant contended that the accident not happened due to rash and negligent driving of the 2nd respondent and denied the injuries of 1st Respondent. The counsel for appellant further contended that disability 29% fixed by the tribunal is high and contended that the award of tribunal various heads very high.

8. The learned counsel for the 1st respondent submitted that the evidence of PW1 clearly shows the accident occurred only due to rash and negligent driving of the rider of the 2nd Respondent and Vehicle was insured with the appellant the same corroborated by the Documentary Evidence Ex.P1 and Ex.P5 (Charge Sheet). hence the appellant and 3rd Respondent are liable to pay Compensation. The counsel for the 1st Respondent further submitted that considering the injuries of 1st Respondent, Disability and occupation. The tribunal rightly awarded total compensation of Rs.1,56,665/- with 7.5% interest considering the above all heads. The tribunal considered all the materials is proper perspective and awarded proper compensation and prayed for dismissal of the above Civil Miscellaneous Appeal.

9. I heard M/s.N.B.Surekha, learned counsel for the appellant and Mr.K.Varadha Kamaraj, learned counsel for the 1st Respondent and perused the materials available on record.

10.As far as negligence concern I find this accident happened due to the rash and negligent driving of the 2nd respondent vehicle because 1st Respondent (PW1) is best person to speak the accident he clearly says the accident happened rash and negligent driving of 1st Respondent Vehicle and the same corroborated by FIR and Charge sheet and regards the same no contra evidence by appellant. I am not interfere with tribunal finding in this regard.

11.I find the tribunal awarded various claims under all heads is correct and reasonable considering the 1st Respondent/Claimant grievous injuries, treatment period and Doctor Evidence, hence, I am not interfere with tribunal awards all heads regards quantum of compensation. I find no merits in this appeal. The award dated 26.04.2016 made in M.A.C.T.O.P.No.1522 of 2008 on the file of Motor Accident Claims Tribunal, Principal District Court, Tiruppur, is confirmed.

12.In the result, the above Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed. The learned counsel for the appellant is directed to deposit the award amount along with interest, if not already deposited, within six weeks from the date of receipt of a copy of this order. On such deposit, the 1st Respondent permitted to withdraw his above said award amount along with interest, after adjusting the amount already withdrawn if any.

vs

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge
(Motor Accidents Claims Tribunal)
Tiruppur.

Copy to:-

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.58203

+1cc to M/s.N.B.Surekha, Advocate, S.R.No.58288

C.M.A.No.1534 of 2018
and

ssd(CO)
Kak(20/03/2019)

CMP.No.12241 of 2018