

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.907 and 1095 of 2011 and
M.P.Nos.1 and 1 of 2011

The National Insurance Co., Ltd.,
No.751, Anna Salai, 2nd Floor,
Chennai - 600 002 ...Appellant in both the Appeals

Vs

1. B.Prabhakar ...1st Respondent in C.M.A.No.907 of 2011
2. K.Pandithurai ...1st Respondent in C.M.A.No.1095 of 2011

3. K.P.N.Travels India Ltd.,
B-23, Rajaji street,
Swarnapuri,
Salem - 636 004 ...2nd Respondent in both the Appeals

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Common Award passed by the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai made in M.C.O.P.Nos.1903 and 4217 of 2006 dated 16.08.2010.

For Appellant : Mr.M.Krishnamoorthy

For Respondents

In C.M.A.No.907 of 2011 :Mr.K.Ayyadurai for M/s N.Muthurajan for R1

R2 - Exparte

In C.M.A.No.1095 of 2011: Mr.F.Terrychellaraja for R1

R2 - Exparte

C O M M O N J U D G M E N T

The instant appeals have been filed by the Insurance Company challenging the common award dated 16.08.2010 passed by the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai in M.C.O.P Nos.1903 and 4217 of 2006.

2. The brief facts leading to the filing of the appeals are as follows:

(i) The 1st respondent in both the appeals were travelling as passengers in a bus bearing registration no.TN-27-P-9199, on 31.01.2006 and the said bus was owned by the 2nd Respondent and insured with the Appellant. The bus collided with a lorry bearing registration no.TN-22-Z-9747,

which was carrying hot tar. Due to the collision between the bus and the lorry, the hot tar from the lorry spilled over the bus and on the road. Due to the accident, the 1st Respondent in both these appeals and some other passengers in the bus got down from the bus and they got trapped in the boiling tar and suffered burn injuries.

(ii) The 1st respondent in both these appeals preferred separate claims before the Motor Accident Claims Tribunal, seeking compensation for the injuries sustained by them, as a result of the accident. The 1st respondent in C.M.A.No. 907 of 2011 filed M.C.O.P.No.1903 of 2006 seeking a compensation of Rs.6,00,000/-. The 1st respondent in C.M.A.No.1095 of 2011 filed M.C.O.P.No.4217 of 2006 seeking a compensation of Rs.5,00,000/-. By a common award dated 16.08.2010 passed in M.C.O.P.No.1903 of 2006 and M.C.O.P.No.4217 of 2006, the Motor Accident Claims Tribunal directed the appellant to pay the 1st respondent in C.M.A.No.907 of 2011, a sum of Rs.1,50,300/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and also directed the appellant to pay the 1st Respondent in C.M.A.No1095 of 2011 a sum of Rs.2,48,400/- together with interest at 7.5% per annum from the date of claim till the date of realisation.

(iii) Aggrieved by the common award passed in M.C.O.P.Nos.1903 and 4217 of 2006 dated 16.08.2010, the instant appeals have been filed by the Insurance Company questioning its liability as well as questioning the quantum of compensation assessed by the Tribunal.

3. Heard Mr.M.Krishnamoorthy, learned counsel for the appellant and Mr.K.Ayyadurai, learned counsel for the 1st Respondent in C.M.A.No.907 of 2011 and Mr.F.Terrychellaraja, learned counsel for the 1st Respondent in C.M.A.No.1095 of 2011. The 2nd respondent, being the owner of the bus has remained exparte both before the Tribunal as well as this Court.

4. According to the learned counsel for the appellant, the Tribunal has failed to note that the injuries alleged to have been sustained by the respective claimants was caused due to their own fault and not due to the accident. Further, he would contend that the respective claimants have not established before the Tribunal that they were travelling in the bus and assuming, but, not admitting the same, it was evident that they have alighted contrary to the warning of the conductor and stepped on the tar. Only the passengers, who stepped out of the bus, despite the warning given by the conductor had sustained injuries and not others. Therefore, it is evident that the respective claimants only due to their own fault have sustained burn injuries by stepping into the tar, which spilled over from the lorry.

5. The learned counsel for the appellant also contended that due to the non-joinder of parties, namely, the owner and insurer of the lorry, the claim ought to have been rejected by the Tribunal. Insofar as the compensation awarded by the Tribunal is concerned, the learned counsel for the appellant would contend that the respective claimants have not proved their occupation and income before the Tribunal. According to him, the compensation awarded by the Tribunal under the impugned award is an excess compensation and not in accordance with the settled principles of Law laid down by the decisions of this Court, as well as the Hon'ble Apex Court. Besides the above, he would contend that the Tribunal has failed to note that the Doctors, who had issued the alleged Disability Certificate to the respective claimants have not followed any acceptable formula, as per Schedule-I of the Workmen Compensation Act or the guidelines of the Central Government.

6. Per contra, the learned counsels for the 1st respondent in both these appeals would contend that only due to the accident, the respective claimants have suffered burn injuries. The claimants were forced to step out of the bus fearing for their lives and had to step on the tar, which was spilled from the lorry. According to him, the Tribunal has given a clear and categorical finding that only to the

rash and negligent driving by the driver of the bus insured with the appellant, the accident had happened, which resulted in the respective claimants suffering burn injuries.

7. According to the learned counsels for the 1st Respondent / claimants, they have filed 15 documents before the Tribunal and the same were marked as Exs.P.1 to P.15. The documents, which were marked as Exhibits includes the discharge summary from the hospital, salary certificate, certificate issued by Ralson [India] Limited, disability certificate for the respective claims, bus ticket and medical bills. Further, he contended that on the side of the claimants, four witnesses were examined. He also submitted that no contra evidence was produced by the appellant before the Tribunal to disprove the disability suffered by the respective claimants, as a result of the accident caused by the bus insured with the appellant.

8. This Court after considering the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels observed the following:

(a) The Tribunal has given a categorical finding that only due to the rash and negligent driving by the driver of the bus insured with the appellant, the accident had happened, which forced the respective claimants to alight from the bus fearing for their lives resulting in them stepping over the hot tar, which was spilled over the road from the lorry which collided with the bus. FIR was also registered only against the driver of the bus insured with the appellant. The Tribunal has given a finding that the contents of the FIR does not contradict with the evidence of the respective claimants. Further, the appellant has not filed any document before the Tribunal and has also not examined any witnesses on its side. Therefore, it can be inferred that no contra evidence has been produced by the appellant before the Tribunal to disprove the claim of the respective claimants that only due to the rash and negligent driving of the driver of the bus insured with the appellant, the accident had happened, resulting in the injuries sustained by the respective claimants.

(b) The tribunal under the impugned award has considered all these factors and only thereafter, has come to the conclusion that the appellant is liable to pay the compensation to the respective claimants.

(c) Insofar as the quantum of compensation assessed by the Tribunal to the 1st Respondent in C.M.A.No.907 of 2011, who is the claimant in M.C.O.P.No.1903 of 2006, admittedly, he was an Assistant Engineer [Electrical] at NALCO Enterprises Limited, Prakasam Salai, Chennai ¶ 1 and the 1st Respondent in C.M.A.No.1095 of 2011, who is the claimant in M.C.O.P.No.4217 of 2006 was having his own shop at Burma Bazaar. The 1st Respondent in C.M.A.No.907 of 2011 has also filed his salary certificate before the Tribunal, which is marked as Ex.P.6 and the 1st Respondent in C.M.A.No.1095 of 2011 has filed a copy of the rental agreement, namely, Ex.P.14 to prove that he is running a shop at Burma Bazaar in Chennai.

(d) The Tribunal under the impugned award has granted compensation of Rs.1,50,300/- to the 1st Respondent in C.M.A.No.907 of 2011 under different heads and the same is as follows:

Sl.No.

Heads

Amount

01

Loss of Income

22,000

02

Transport to hospital

5,000

03	
Extra Nourishment	
5,000	
04	
Damage to clothing	
2,000	
05	
Medical Expenses	
46,300	
06	
Pain and Sufferings	
20,000	
07	
Permanent disability	
50,000	
TOTAL	
Rs.1,50,300	

(e) The Tribunal under the impugned award has granted a total compensation of Rs.2,48,400/- to the 1st Respondent in C.M.A.No.1095 of 2011 and the same is detailed as follows:

Sl.No.	
Heads	
Amount	
01	
Loss of Income	
27,000	
02	
Transport to hospital	
5,000	
03	
Extra Nourishment	
5,000	
04	
Damage to clothing	
1,000	
05	
Medical Expenses	
85,400	
06	
Pain and Sufferings	
25,000	
07	
Permanent disability	
1,00,000	
TOTAL	
Rs.2,58,400	

Considering the age, avocation and the year of accident, the compensation awarded to the respective claimants by the Tribunal is a just compensation. The award passed by the Tribunal is a reasoned and a well considered award.

In the light of the above observations, there is no merit in the instant appeals. Accordingly, the Civil Miscellaneous Appeals are dismissed, confirming the quantum of compensation and the rate of interest at 7.5% per annum awarded by the Tribunal. The Appellant / National Insurance Company, Chennai is directed to deposit the amount awarded by the Tribunal along with accrued interest to the credit of M.C.O.P. Nos.1903 of 2006 and 4217 of 2006 respectively, if not already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the 1st Respondent in both the appeals / claimants are entitled to withdraw their respective amounts along with accrued interest lying to the credit of M.C.O.P.Nos.1903 of 2006 and 4217 of 2006, by filing an appropriate Application. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

09.10.2018

Index:Yes/No

Speaking order/non-speaking order

ssd

ABDUL QUDDHOSE, J.

ssd

To

1. The Motor Accident Claims Tribunal,
[IV Judge, Court of Small Causes],
Chennai

2.The Record Clerk,
VR Section,
High Court, Madras.

C.M.A.Nos.907 and 1095 of 2011 and
M.P.Nos.1 and 1 of 2011

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