

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.307 of 2015
and M.P.No.1 of 2015

New India Assurance Company Ltd.
20, Government College Road
Kovai District

..Appellant/6th respondent

vs

1.K.Nachimuthu
2.P.Semalai
3.P.Kumarasamy
4.United India Insurance Co.Ltd.,
Branch Office, No.5, Periakadai Veedhi
Dharapuram Post, Erode District

5.C.Shanmugam
6.E.Gomathi

...Respondents

Civil Miscellaneous Appeal filed against the judgment and decree of the learned Motor Accidents Claims Tribunal (Subordinate Judge) at Dharapuram in MACTOP.No.243 of 2006 dated 17.03.2008.

For appellant : : Mr.C.Ramesh Babu
For Respondents : :
for R4 : : Ms.R.Sreevidhya
for R5 : : Mr.N.Manokaran

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the Insurance company challenging the judgment and decree passed by the Motor Accidents Claims Tribunal (Subordinate Judge) at Dharapuram in MACTOP.No.243 of 2006 dated 17.03.2008.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the Petitioner is that on on 16.04.2005 at about 8.30 a.m., when the petitioner-K.Nachimuthu was travelling in a Mini Auto bearing Reg.No.TN-55-E-6646 to his relatives house along with other persons, as they approached South West road of Vellakoil-

Thottampatti road, the 1st respondent driver who was driving the Mini bus bearing Reg.No.TN-28-D-7486 came at high speed from east towards west and on seeing the same, the 4th respondent who was driving the mini auto moved to the extreme left side of the road. However, the 1st respondent mini bus driver lost control due to high speed, dashed against the mini auto with great force. In the said impact, the mini auto capsized causing multiple injuries to the Petitioner and other passengers. The petitioner suffered fracture on his left shoulder and also injuries all over his body. The accident occurred due to the negligence of the 1st respondent bus driver only. The Petitioner who was doing Textile business was earning Rs.5,000/- per month and after the accident, he is not able to continue his business due to the permanent disability suffered by him. As such, he suffered loss of income. Hence the petitioner sought for a sum of Rs.3,00,000/- as compensation from the respondents.

3. Before the Tribunal, the Petitioner has impleaded the owner and insurer of the Mini bus as 2nd and 3rd respondents while the owner and insurer of the Mini auto has been impleaded as Respondents 5 and 6. The driver of the Minibus and minidoor auto has been impleaded as 1st and 4th respondents.

4. Opposing the petition, the 6th respondent-The New India Insurance Company contends that they were not informed about the accident by the 4th and 5th respondents. As such, the claim against the 6th respondent is not maintainable. The nature of accident has to be proved by the Petitioner. The age, avocation and income of the Petitioner is disputed. The claim of the Petitioner under various heads is not correct. The 1st respondent/driver is not responsible for the accident. The 4th respondent-Auto driver was having valid driving licence and the same amounts to violation of Policy condition. As such, the 6th respondent is not liable to pay any compensation. Hence the 6th respondent seeks dismissal of the Petition.

5. Opposing the petition, the 3rd respondent disputed the manner of accident as alleged by the Petitioner and contended that the accident occurred due to contributory negligence of the driver of the mini auto bearing Reg.No.TN-55-E-6646; further the Mini auto carried higher number of passengers and due to rash and negligent driving of the mini auto, the accident occurred. Further the driver of the mini auto was not having valid driving licence. Thus the 3rd respondent/United India Insurance Company also sought for dismissal of the petition.

6. The 5th respondent also filed counter contending that he has sold the mini auto to the 4th respondent but name transfer has not been effected in the R.C.Book and the accident occurred only due to the negligence of the driver of the mini bus, who has been arrayed as 1st respondent. Hence the 5th respondent

seeks dismissal of the petition.

7. Before the Tribunal, along with Petition in M.C.O.P.No.243 of 2006 filed by the petitioner/Nachimuthu, other connected MCOP.Nos.244/2006 and 242/2006 were heard together. On the side of the Petitioners, they examined P.Ws.1 to 4 and marked documents Ex.P.1 to P.21. On the side of the respondents, R.W.1 and R.W.2 were examined and produced documents Ex.R.1 and Ex.R.2. On the basis of available materials, the Tribunal apportioned the negligence on both the drivers equally and awarded compensation of Rs.60,045/- to the Petitioner Nachimuthu. Aggrieved over the said finding of the Tribunal, the 6th respondent/Insurance Company has come forward with the present appeal.

8. The learned counsel appearing for the appellant/6th respondent/Insurance Company contends that the Petitioner/claimant travelled in a minidoor auto as a gratuitous passenger and no liability can be imposed on the insurance company for such passenger. As the petitioner and his co-passengers travelled in a goods vehicle as gratuitous passengers and the Insurance Policy of the said vehicle does not cover the gratuitous passengers carried in the said vehicle, no amount is payable by the insurer. The award of the Tribunal is on the higher side and the same is liable to be set aside. The Tribunal ought to have fixed the negligence on the driver and owner of the mini auto only and not on the mini bus. The 6th respondent/Insurance company is not liable to pay any compensation. Hence, they seek to set aside the award.

9. Per contra, the learned counsel for the Petitioner contend that the Tribunal after taking into consideration the materials available on record, has rightly apportioned the negligence on the drivers of both the vehicles and awarded just compensation, which requires no interference. The learned counsel for the Petitioner/claimant thus sought for dismissal of the appeal.

10. The Petitioner herein filed a claim petition seeking a sum of Rs.3,00,000/- as compensation from the respondents for the injuries sustained by him in the accident which took place on 16.04.2005 at 8.30 a.m. According to the Petitioner, he was travelling along with others in the Mini Auto bearing Reg.No.TN-55-E-6616 owned by the 5th respondent-Gomathi, insured with the 6th respondent and driven by 4th respondent-Shanmugam. The driver of the Mini auto was proceeding in slow speed and at that time, the Mini bus bearing Reg.No.TN-28-D-7486 owned by the 2nd respondent and insured with the 3rd respondent driven by its driver, the 1st respondent came at high speed, driven in a rash and negligent manner, dashed against the mini auto causing the accident. The petitioner suffered multiple injuries and he took

treatment as inpatient for 10 days. The Tribunal found that the drivers of both vehicles are equally responsible for the accident. Challenging the said finding, the 6th respondent Insurance Company with whom the mini auto bearing Reg.No.TN-55-E-6646 was insured has come forward with the appeal contending that the negligence has to be fixed on the driver of the mini bus only in full and not on the driver of the mini auto.

11. Before the Tribunal, the Petitioner was examined as P.W.3 and deposed about the accident clearly. The Petitioner also produced the copy of FIR as Ex.P.1; Rough Sketch of the accident spot as Ex.P.3 and Observation Mahazar as Ex.P.4. It is evident from Ex.P.3 that the accident occurred in the middle of the road and after taking into consideration the said Rough Sketch, wherein, the Mini bus bearing Reg.No.TN-28-D-7486 is shown as standing in the middle of the road, and the mini auto capsized on the side of the road. The Tribunal concluded that the accident took place due to the negligence of the drivers of both the vehicles. Further, in the connected matters in MCOP.Nos.242/2006, 244/2006, the appellant/6th respondent-New India Insurance Company is stated to have filed C.R.P.No.1111 of 2010 and as per Judgment dated 31.07.2017, the contention of the 6th respondent/Insurance Company was dismissed by another Bench of this Court. Therefore, it is clear from the available material that the accident occurred in the middle of the road and the Tribunal has correctly fixed the negligence on the drivers of both the vehicles equally, which conclusion needs no interference.

12. The Petitioner stated that he suffered fracture on his left shoulder and injuries all over the body and after taking treatment at L.K.M.Hospital at Erode, he was treated at Ganga Hospital, Coimbatore. He was treated as inpatient for totally 10 days. Ex.P.14 copy of Injury certificate, Ex.P.15-Discharge summary and Ex.P.16-Medical bills substantiate the same. The doctor who deposed as P.W.4 stated that he had taken X-ray which is produced as Ex.P.20 and as per his assessment, the petitioner suffered 18% disability. Further the doctor stated that the fractured bone in the left shoulder of the petitioner is malunited and due to that the movement of the right and left shoulder has decreased and the disability certificate issued by him is Ex.P.21.

13. The Tribunal, considering the oral evidence of Petitioner and that of medical expert P.W.4 fixed disability of the petitioner at 18% and awarded a sum of Rs.18,000/- towards the same. The Tribunal has awarded the following amounts under various heads.

Sl.No.	Heads	Amount awarded by the Tribunal
1	Loss of income for 2 months treatment period	Rs. 5,000/-
2	Transport expenses	Rs. 3,000/-
3	Extra nourishment	Rs. 500/-
4	Pain and suffering	Rs. 10,000/-
5	Partial permanent disability 18%	Rs. 18,000/-
6	Future loss of earning	Rs. 28,000/-
7	Medical bills	Rs. 4,545/-
	Total	Rs. 69,045/-

Considering the nature of injury suffered and the compensation granted, this court is of the view that the award passed by the Tribunal is just and reasonable and the same is to be confirmed.

14. Considering the above said facts and that the accident occurred due to the negligence of both the drivers in the middle of the road, both are held to be jointly liable. As the Motor vehicles Act is a beneficial legislation, the victim should not be denied the just and proper compensation. In the case on hand, the award passed by the Tribunal is found to be on just and proper appreciation of the available evidence placed before it. As such, in the interest of justice and equity, this court finds that no ground is made out to set aside the award passed by the Tribunal.

15. In the result, the award passed by the Tribunal/Subordinate Judge at Dharapuram in MACTOP.No.243 of 2006 dated 17.03.2008, is confirmed. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected MP is closed. The Appellant/Insurance Company is granted six weeks time to deposit the award amount.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
(Subordinate Judge) at Dharapuram.

2.The Section Officer,
V.R.Section, High Court, Madras. (2 copies)

+1 CC to Mr.C. Ramesh Babu, Advocate sr 11647.

+1 cC to Mr.N. Manokaran, Advocate sr 12098.

+1 CC to Ms.R. Sreevidya, Advocate sr 11589.

C.M.A.No.307 of 2015

SP(23/05/2018)



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