

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2018

CORAM

HE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.919 of 2013

and

M.P.No.1 of 2013

The Branch Manager,
United India Insurance Co. Ltd,
R.B.R. Complex, Bye Pass Road,
Dharmapuri. Appellant/2nd Respondent

Versus

1.P.Chinnasamy
2.M.Sivasakthi Respondents/Petitioners
1st Respondent
(2nd Respondent ex-parte before
Lower Court)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 23.02.2011 made in M.C.O.P.No.250 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri.

For Appellant : Mr.M.B.Raghavan for
Mr.M.B.Gopalan

For Respondent : Mr.T.Pappaiah Dharmarajan
(in S.R. Stage)

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 23.02.2011 made in M.C.O.P.No.250 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri.

2. The brief facts of the case leading to the claim application are as follows :-

On 21.02.2010 at 4.30 p.m, the petitioner being an electrician was proceeding to Pallipatti, in his Moped bearing Registration No.TN. 29-C-3031 in a very slow and cautious manner in the left side of the road. At that time, a Milk Van bearing Registration No.TN-47-A2977 belonged to the first

respondent and insured with the second respondent came in the opposite direction in a rash and negligent manner and dashed against the petitioner. The petitioner was thrown out of from the Moped and he had sustained injuries including fracture. A criminal case was also registered against the driver of the Milk Van. Due to the said injuries, the petitioner sustained disability and also incurred heavy medical expenses and loss of income. Hence, the petitioner claimed a sum of Rs.5,00,000/- as compensation under various heads.

3. The 1st respondent remained exparte before the Tribunal.

4. The second respondent / Insurance Company in the counter statement denied the mode of accident. The second respondent also denied the nature of injuries sustained by the claimant and the amounts claimed by the claimant under various heads are also stated as excessive amounts.

5. The Tribunal, after analyzing the evidence and documents has given a finding that the accident had occurred only due to the rash and negligent driving on the part of the driver of the Milk Van. The Tribunal has also awarded a sum of Rs.1,01,391/- as compensation under various heads as follows:

Heads	Amount awarded by the Tribunal (Rs.)
For Disability at 25%	50,000.00
Injuries	30,000.00
Pain and Sufferings	10,000.00
Mental Agony	5,000.00
Transport Expenses	1,000.00
Nourishment	1,000.00
Loss of amenities	1,000.00
Medical Expenses	3,391.00
Total compensation	1,01,391.00

The Tribunal has also directed the respondents 1 and 2 to pay a sum of Rs.1,01,391/- to the claimant jointly and severally. Aggrieved against the said award, the appellant/Insurance company has preferred this appeal.

6. In the ground of the appeal, the appellant has stated that the vehicle involved in the said accident was not possessing any fitness certificate and the driver of the said vehicle was also not in possession of a valid driving license. It is stated in the appeal that the evidence of RW1 and RW2 and also documents Ex.P1 to Ex.P4 clearly prove that the

insurer of the vehicle did not possess any valid fitness certificate and the driver was also not possessing a valid driving license. The date of accident was on 21.02.2010 and the driving license which was holding by the driver at the time of accident was valid only till 18.12.2009 and only subsequent to the said accident, the license was renewed. The grievance of the appellant is that the above said aspects were not considered by the Tribunal and awarded a huge sum under various heads and the total sum of Rs.1,01,391/- is highly excessive.

7. Heard both sides and perused the materials available on record.

8. On the side of the appellant, it is argued that on the date of accident the vehicle was not having any fitness certificate. Further, the driver of the said vehicle was also not in possession of a valid driving license. The above said facts were also proved before the Tribunal by examining the witness on the side of the respondent. The appellant has also argued that there is no negligence on the part of the driver of the Milk Van. The injuries sustained by the claimant were very much exaggerated and the Tribunal has also awarded huge sum without any sufficient documentary evidence.

9. On a perusal of the records, it is seen that the accident had occurred by hitting the Milk Van against the petitioner and hence petitioner sustained severe injuries. The FIR Ex.P1 was also registered against the driver of the Milk Van, hence, it is very much proved that the accident had occurred only due to rash and negligent driving on the part of the driver of the Milk Van. On the side of the petitioner, the policy copy of the vehicle and also the driving license of the driver was produced before the Tribunal. On the side of the respondent, RW2 was examined. Though in his evidence deposed that there was no fitness certificate for the said vehicle and the driver of the vehicle was also not possessing the valid license, it is argued by the appellant that subsequent to the accident, the license was renewed and it was marked as Ex.R4. It is also observed that the date of accident was on 21.02.2010 and the license was renewed on 22.02.2010. The Tribunal, after analysing the evidence and documents, has given a finding that there was a fitness certificate for the said vehicle and there was also driving license for the driver of the said vehicle. Hence, in view of the documents and evidence placed before the Tribunal, the Tribunal has fixed the liability on the appellant. Based on the argument, it does not require any interference.

10. With regard to the sum awarded by the Tribunal, it is observed that the petitioner sustained fracture injuries and that was very much proved by the document i.e discharge summary. The claimant was also given treatment at Ganga

Hospital, Coimbatore and surgery was also done to him for the said injury. It was also clearly spoken before the Tribunal that inspite of the surgery and treatment, the claimant sustained disability to the extent of 35% and he is unable to lift any objects and his shoulder has not been restored inspite of proper treatment, hence the disability has been assessed at 35%. For the said disability, Ex.P10 was produced before the Tribunal. The Tribunal, after observing the treatment and the disability sustained by the claimant has taken the disability at 25% and awarded a sum of Rs.50,000/-, which is no way an excessive amount. It is also observed that the petitioner had sustained injuries and surgery was also done and inspite of the said injuries, his health was not restored and it resulted inefficiency and indirectly resulted in loss of income and inconvenience and loss of amenities. Hence, the Tribunal has awarded a sum of Rs.30,000/- for the said injuries and the sum awarded under the heads of pain and suffering, mental agony, nourishment are all very much reasonable in view of the age of the claimant and the disability. Hence, in view of the above said observation, this Court finds that the sum awarded by the Tribunal is very much reasonable and does not require any interference.

11. It is also represented that the appellant have deposited 50% of the entire award and the same also was withdrawn by the respondent/claimant. Hence, in view of the above judgment, the respondent is permitted to withdraw the balance amount.

12. Considering the disability and injuries sustained by the claimant, this Court is of the view that if the Appellant/Insurance Company is directed to pay the compensation and permitted to recover the same from the 2nd respondent/owner of the offending vehicle, the ends of justice would be met by the claimant, who suffered the disability because of the negligent driving on the part of the driver of the lorry, which has been very much proved by the evidence and documents. The arguments putforth by the appellant that there was no valid fitness certificate and the driver of the vehicle got renewed his license after the accident. For the alleged vehicle, it was renewed. No doubt these facts are very much known to the owner of the vehicle / 2nd respondent.

13. In view of the above discussion, the Civil Miscellaneous Appeal is disposed of with the direction to the appellant / Insurance Company to deposit the remaining award amount, with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order and recover the same from the 2nd respondent/owner of the offending vehicle bearing registration number TN-47-A2977 by filing appropriate petition. On such deposit being made, the Tribunal is directed to transfer the amount to the

claimant's bank account through RTGS within one week thereon.
Consequently, the connected Miscellaneous Petition is closed.
No cost.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

uma

To

1. The Additional District Judge,
The Motor Accident Claims Tribunal,
Dharmapuri.

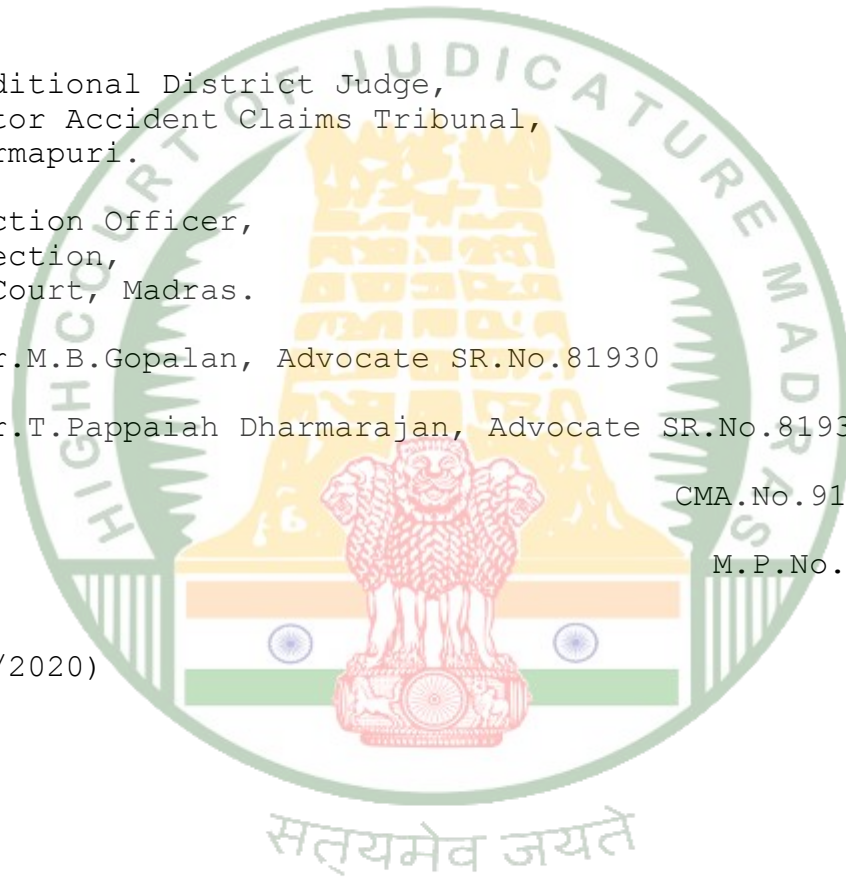
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.M.B.Gopalan, Advocate SR.No.81930

+1cc to Mr.T.Pappaiah Dharmarajan, Advocate SR.No.81937

CMA.No.919 of 2013
and
M.P.No.1 of 2013

RK (CO)
GMY (24/01/2020)



WEB COPY