

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.879 of 2006

National Insurance Co. Ltd.,
Branch Office,
No.81D, Chetty Street,
Opposite Bus Stand, Tiruchengod
through its Branch Manager ... Appellant

...vs...

1.Uthama Jain
2.P.Sengottaiyan
3.A.Selvam

... Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 10.06.2005 made in MCOP.No.149 of 2003 on the file of the Motor Accident Claims Tribunal/ I Additional Sub Judge, Erode.

For Appellant : Mr.K.Suryanarayanan

JUDGMENT

Being aggrieved over the finding of the Tribunal, dated 10.06.2005 made in MCOP.No.149 of 2003 on the file of the Motor Accident Claims Tribunal/ I Additional Sub Judge, Erode, the second respondent-Insurance Company has come forward with this present appeal seeking to set aside the award passed by the Tribunal.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 15.05.2001, while the petitioner was going as a pillion rider in a two wheeler bearing Registration No.TN-33-F-1363, driven by his colleague Srinivasan from Erode to Tiruchengode in connection with the

office work around 10.45 a.m., the first respondent Bus bearing Registration No.TN-28-M-3399 came in the opposite direction at high speed dashed against the two wheeler in which the petitioner was travelling causing him multiple fracture in his right hand and also injuries all over his body. The rider of the two wheeler died on the spot. The accident occurred only due to the negligence of the second respondent vehicle driver only. The bus belongs to the second respondent and the same was insured with the third respondent. The petitioner was aged about 29 years and by working as Manager in a Private Company was earning a sum of Rs.5,000/- per month. Now, due to the injuries suffered by him, he is not in a position to attend to his normal work resulting in loss of income. Thus, the petitioner sought for a sum of Rs.2,50,000/- as compensation from the respondents.

4. On the other hand, opposing the claim petition, the third respondent-Insurance company filed counter contending that the accident does not occur in the manner alleged by the petitioner. There was no rash and negligent driving on the part of the second respondent bus driver, but the accident occurred only due to the negligence on the part of the deceased Srinivasan who was riding the two wheeler in which the petitioner travelled as a pillion rider. The petitioner first to prove that the rider of the two wheeler possessed valid licence. The failure of the petitioner to include the owner and insurer of the two wheeler bearing Registration No.TN-33-F-1363 as parties to the proceedings is fatal. The age, avocation, income and medical expenses claimed by the petitioner is denied. Thus, the third respondent-Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 to P.W.3 and produced documents Ex.P1 to Ex.P14 to prove his claim. On the side of the respondents, neither oral evidence nor documentary evidence was let in.

6. The Tribunal, after analyzing the evidence available on record found the negligence on the part of the first respondent motor cycle rider alone is the caused for the accident and passed a Award for a sum of Rs.1,31,600/- as compensation to the petitioner. Being aggrieved over the finding of the Tribunal, the third respondent-Insurance Company has come forward with the present appeal seeking to set aside the award passed by the Tribunal.

7. I have heard the learned counsel appearing for the appellant/third respondent Insurance Company and the learned counsel appearing for the first respondent/claimant and perused the materials available on record.

8. The learned counsel appearing for the appellant/third respondent Insurance Company contends that the Tribunal erred in fixing the negligence on the part of the second respondent vehicle driver. As per Ex.P1 First Information Report, the rider of the two wheeler alone drove the vehicle in a rash and negligent manner and dashed against the first respondent bus. The Tribunal assessed the disability on the higher side and also awarded compensation in very excessive manner. Thus, the appellant/third respondent Insurance Company sought for setting aside the award passed by the Tribunal by allowing the appeal.

9. Per contra, the learned counsel appearing for the first respondent/claimant contends that the Tribunal passed just and fair award and the same need not be interfered with. Thus, he sought for dismissal of this appeal.

10. The Tribunal on the basis of eye witness account given by the petitioner who deposed as P.W.1 and the contents of Ex.P1 First Information Report as well as Ex.P8 Final Report and Ex.P9 copy of the Judgment passed by the Criminal Court held that the first respondent driver alone caused the accident.

11. The petitioner who deposed as P.W.1 stated about the injuries suffered by him. The Doctor who deposed as P.W.2 stated that the petitioner suffered 28% disability. Taking into account the same, the Tribunal, applying the multiplier method fixed the annual income of the petitioner at Rs.15,000/- and applying the multiplier 18, passed an award for a total sum of Rs.1,31,600/-. It is clear from Ex.P2 wound certificate as well as the Doctor's evidence that the petitioner has suffered multiple fracture in his right shoulder, right hand and on the right side hip also. It is also stated by the medical experts that the injury No.2, 4 and 5 are grievous, while injuries Nos.1 and 3 as mentioned in Ex.P2 wound certificate are simple in nature. Keeping in mind the above said evidence and the fact that the petitioner suffered 28% disability and he has incurred medical expenses of Rs.20,800/- as per Ex.P4 to Ex.P7 medical bills, the Tribunal has passed an award for a total sum of Rs.1,31,600/- as compensation. No ground is made out by the Insurance Company to find fault with the said conclusion arrived at by the Tribunal. The grounds raised by the Insurance company is not supported by the materials on record and the Tribunal has given clear cut finding about the disability suffered by the petitioner and consequently loss of earning capacity caused to the petitioner. As such, this Court finds nothing wrong in the reasoning of the Tribunal that negligence of the first respondent driver alone caused the accident and the petitioner has suffered functional disability. As such, the conclusion of the Tribunal is based on proper appreciation of the evidence on record and the same needs no interference. The point is answered accordingly.

12. In the result, the civil miscellaneous appeal is dismissed. No costs. The amount of Rs.1,31,600/- awarded by the Tribunal dated 10.06.2005 made in MCOP.No.149 of 2003 on the file of the Motor Accident Claims Tribunal/Additional Sub Judge, Erode, is hereby confirmed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

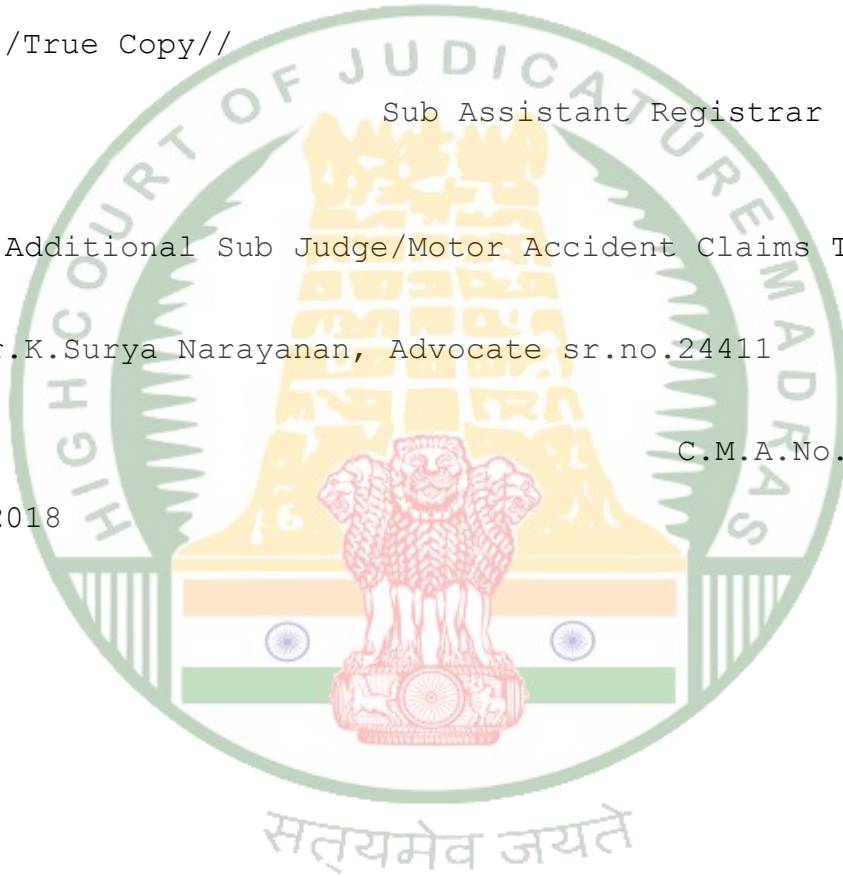
To

The First Additional Sub Judge/Motor Accident Claims Tribunal
Erode.

+1cc to Mr.K.Surya Narayanan, Advocate sr.no.24411

C.M.A.No.879 of 2006

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