



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2018

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA (MD) No.1238 of 2014

and

MP (MD) No.1 of 2014

The Divisional Manager,
National Insurance Co.Ltd.,
No.1754/1756 Manojiappa Street,
Thanjavur.

... Appellant/Respondent No.2

vs.

1) Minor Santhoshkumar

Rep. by his father & natural guardian

Thiru.Gunasekaran

...1st Respondent/Petitioner

2) R.Adhimoolam

...2nd Respondents/Respondent No.1

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 29.02.2012 made in MCOP.No.555 of 2008 on the file of Motor Accident Claims Tribunal (Principal Sub Judge), Thanjavur.

For Appellant : Mr.S.Srinivasa Raghavan

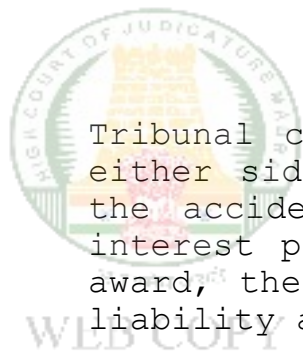
For R1 : Mr.G.Karnan

For R2 : Mr.S.Palanivelayutham

JUDGMENT

The present appeal has been filed against the fair and decreetal order dated 29.02.2012 made in MCOP.No.555 of 2008 on the file of Motor Accident Claims Tribunal, (Principal Sub Judge), Thanjavur.

2.It is the case of the 1st respondent/claimant that on 05.07.2007, he along with his father were travelling in a Auto bearing registration No.TN-49-C-4770. While they were returning from Thirumalaisamuthiram, after worship at Bagavathi Amman Koil, near Thanjavur Sastra College, a Lorry bearing registration No.TN-45-C-6077 belonging to the 2nd respondent insured with the appellant came in a rash and negligent manner and hit the Auto, in which, the minor claimant sustained grievous injuries. The minor claimant through his father laid a claim in MCOP.No.555 of 2008 on the file of Motor Accident Claims Tribunal, Principal Sub Judge, Thanjavur. The appellant filed counter disputing the manner of accident. The



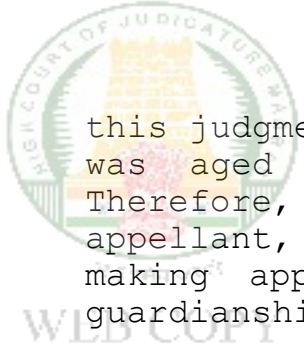
Tribunal considering the oral and documentary evidence adduced on either side held that the driver of the Lorry was responsible for the accident and awarded compensation of Rs.2,50,000/- with 7.5% interest per annum from the date of claim. Aggrieved by the said award, the insurance company has filed this appeal challenging the liability and quantum.

3.Learned counsel for the appellant would submit that at the time of accident, the driver of the Auto did not possess a valid driving licence to drive the vehicle and though it was proved through the evidence of RW1 who deposed that the driver possessed LMV licence and not possessed badge, and also the driving licence report from the Regional Transport Officer, Thanjavur, the Tribunal negatived the same and erroneously fastened liability on the appellant. It is further contended that after the amendment of the Motor Vehicles Act with effect from 14.11.1994, the usage of the vehicle is the only criterion and not the unladen weight of the same which the Tribunal has lost sight of. Therefore, the appellant should be exonerated from the liability to pay compensation.

4.However, this Court is not inclined to accept the above submission in view of the Full Bench judgment of the Hon'ble Supreme Court in *Mukund Dewangan vs. Oriental Insurance Company Ltd.*, reported in (2017) 14 SCC 663, wherein, it has been held that the definition of 'light motor vehicle' under Section 2(21) of the Act includes transport vehicle of the class and weight defined therein. The transport vehicle or omnibus would be light motor vehicle, gross vehicle weight of which, and also a motor car or tractor or road-roller, unladen weight of which does not exceed 7500 kg, and can be driven by holder of licence to drive light motor vehicle and no separate endorsement is required to drive such transport vehicle. Hence, the finding of the Tribunal fixing liability on the appellant is sustained.

5.On the quantum of compensation, it is the only grievance of the counsel for the appellant that when the Tribunal has awarded Rs.1,50,000/- towards 73% disability, ought not to have awarded a further sum of Rs.50,000/- towards disfigurement as it would amount to double compensation. However, this Court is not inclined to subscribe to the said contention for the reason that if a sum of Rs.3,000/- is awarded for each percentage of disability as per the judgment of this Court in *National Insurance Company Limited vs. G.Ramesh*, reported in 2013 (2) TN MAC 583, then the amount would be Rs.2,19,000/-. Therefore, this Court is not inclined to set aside the award under the head 'disfigurement'. Accordingly, the quantum of compensation at Rs.2,50,000/- is sustained.

6.The appellant is directed to deposit the entire award amount awarded by the Tribunal with interest and costs, less the amount already deposited, if any, to the credit of the claim petition within a period of four weeks from the date receipt of a copy of



this judgment. At the time of filing MCOP during 2008, the claimant was aged 17 years and now he would have attained majority. Therefore, on deposit of the award amount with interest by the appellant, the 1st respondent is permitted to withdraw the same after making appropriate application before the Tribunal, discharging guardianship.

Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

The Principal Sub Judge,
Motor Accident Claims Tribunal,
Thanjavur.

Copy to:
The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.G.KARNAN, Advocate, SR.No. 71071

+1cc to Mr.S.SRINIVASA RAGHAVAN, Advocate, SR.No. 71405

CMA(MD)No.1238 of 2014
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