WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.07.2018
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.M.A(MD).No.271 of 2014
and
M.P(MD).No.1 of 2014

The Regional Manager
National Insurance Company Ltd.,
No.1754/1756 Manojiappa Street,
Thanjavur. ... Appellant /2nd respondent

Vs.

1.Arun ... 1st respondent /Petitioner
2.R.Adhimoolam ... 2nd respondent/ 1st respondent

PRAYER :- Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 30.03.2012, made in MCOP No.557 of 2008 on the file of Motor Accidents Claims Tribunal, Additional Subordinate Court, Thanjavur.

For Appellant : Mr.S.Srinivasa Raghavan
For 1st Respondent : Mr.G.Karnan
For 2nd Respondent : Mr.F.Deepak

*****

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the judgment and decree passed by the learned Additional Subordinate Judge, (Motor Accidents Claims Tribunal), Thanjavur, in MCOP No.557 of 2008 dated 30.03.2012.

2. Heard the learned Counsel appearing on either side and perused the records carefully.

3. It is the case of the 1st respondent/claimant that on 05.07.2007, he along with his relatives 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 claimant sustained grievous injuries. 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.51,500/- with 6% interest

https://hcservices.ecourts.gov.in/hcservices/

per annum from the date of claim. Aggrieved by the said award, the insurance company has filed this appeal challenging the liability and quantum.

4. 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.

5. 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.

6. Insofar as the quantum is concerned, the learned Counsel for the appellant contended that the tribunal has erred in fixing the disability of the claimant as 21% and therefore, the same deserves interference.

7. The contention of the learned Counsel for the appellant that the tribunal was wrong in fixing the disability to the claimant cannot be accepted. Perusal of record shows that the claimant sustained multiple injuries all over the body. From the doctor's evidence it is seen that due to the impact of the injuries sustained by the claimant, he lost his hand grip and it caused inability to do his work and therefore, his disability was assessed as 21%. The tribunal, having regard to the facts and circumstances of the case and after analyzing the evidences let-in by both the parties, has rightly fixed the disability and awarded a decent sum, which, in my considered opinion is very reasonable and there is no infirmity in the order passed by the trial judge and does not warrant interference.

https://hcservices.ecourts.gov.in/hcservices/

8. 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. 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.

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

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Additional Subordinate Judge,
   Motor Accidents Claims Tribunal,
   Thanjavur.

2. The Record Keeper,(2 copies)
   Vernacular Records Section,
   Madurai Bench of Madras High Court,
   Madurai.

+2cc to Mr.G.Karnan, Advocate Sr.No.71223,71550
+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.71599

RM

VB/SV/SAR1/31.07.2018/3P/7C

C.M.A(MD).No.271 of 2014
06.07.2018

https://hcservices.ecourts.gov.in/hcservices/