



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.08.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI
CMA(MD).No.562 of 2015

WEB COPY

Gopal

: Appellant/ Petitioner

Vs.

1.M.Pandiaraj
2.Royal Sundaram Alliance
Insurance Company Limited,
Thadikombu Road,
Dindigul,
through its Manager.

: Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree passed by Motor Accidents Claims Tribunal / Special Sub Court, Dindigul, made in MCOP.No.526 of 2012, dated 26.11.2013.

For Appellant : Mr.A. Saravanan

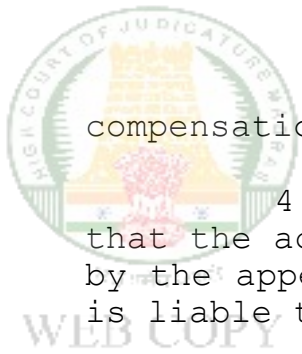
For R2 : Ms. K.R.Sivasankari
for Mr.Srinivasa Raghavan,

R1 : No Appearance
JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Award passed by Motor Accidents Claims Tribunal / Special Sub Court, Dindigul, made in MCOP.No.526 of 2012, dated 26.11.2013.

2. The appellant is the claimant in MCOP.No. 526 of 2012, on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Dindigul. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that occurred on 22.06.2007.

3. According to the appellant, he travelled in the Mini Door Auto bearing Regn. No.TN 57 V 9861 as a loadman. The accident occurred due to rash and negligent driving by first respondent, who is the driver - cum - owner of the Mini Door Auto. The said Auto was insured with the second respondent. Due to the accident, the appellant sustained multiple injuries and after first aid, he was admitted in the Government Rajaji Headquarters Hospital, Madurai, as in-patient and was taking treatment for 11 days. Due to the injuries, his left hand from elbow was amputated and he was unable to work. He claimed a sum of Rs.6,00,000/- as compensation. The first respondent is the owner-cum-driver of the Mini Door Auto and the second respondent is the insurer and hence, he claimed



compensation against the respondents.

4. The first respondent filed counter statement and denied that the accident occurred due to his negligence. The amount claimed by the appellant is excessive, in any event, the second respondent is liable to pay compensation.

5. The second respondent filed counter statement and contended that the appellant travelled as a gratuitous passenger and he did not travel as a loadman, but, he travelled in the cabin of the driver. The first respondent is not having any valid driving licence to drive mini door Auto. For violation of policy and terms and conditions, the second respondent is not liable to pay any compensation. In any event, the amount claimed is excessive.

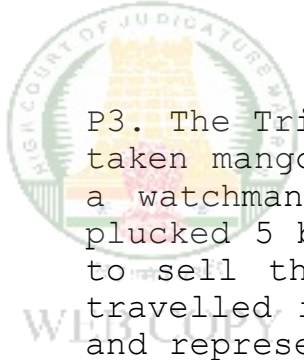
6. Before the Tribunal, the appellant examined himself as PW.1 and one Dr. Vijayakumar as PW.2 and marked 8 documents as Exs.P1 to EX.P8. On the side of respondents, two witness viz., Jayachandran, from RTO and Vinothkumar, legal officer, were examined as RW.1 and RW.2 and marked two documents as Ex.R1 and Ex.R2. One document was also marked as Ex.C1.

7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by first respondent. The Tribunal held that the first respondent alone is liable to pay compensation and dismissed the claim petition against the second respondent on the ground that the appellant was unauthorized passenger and he did not prove that he travelled as a loadman. The Tribunal awarded a sum of Rs.4,59,000/- as compensation and directed the first respondent to pay compensation.

8. Against the said Award, the appellant has come out with the present appeal.

9. I have heard the learned counsel appearing for the appellant and second respondent and perused the materials available on record.

10. The learned counsel appearing for the appellant relied on the Judgment of this Court reported in 2017(2) TNMAC 145 (SC) (*Mukund Dewangan Vs. Oriental Insurance Company Limited*) and submitted that no separate endorsement is required to be obtained by holder of LMV licence to drove the transport vehicle. He further contended that the Tribunal dismissed the claim petition on the ground that the appellant did not travel in the Mini Door Auto as a loadman at the time of accident, but, he travelled only as an unauthorised passenger. The Tribunal came to the said conclusion, based on the First Information Report, which was marked as Ex.P1, Ex.P3 - Charge Sheet and judgment of the Criminal Court - Ex.P4. he further contended that the Tribunal erred in holding that the appellant travelled as unauthorised passenger based on Exs.P1 to



P3. The Tribunal failed to consider that PW.2 has stated that he has taken mango grove on lease and the appellant was employed by him as a watchman of said mango grove. He also stated that they have plucked 5 bags of Mangoes and loaded the same in the Mini Door Auto to sell the same in the market at Ottanchathiram. The appellant travelled in the Mini Door Auto on that day as an employee of PW.2 and representative of owner of the Mango groves. PW.2 has stated in the First Information Report - Ex.P1 that the appellant was working as a Watchman in the Mango Grove, taken on lease by him and the appellant travelled in the Mini Door Auto in the cabin along with 5 bags of Mangoes belonging to PW.2. He also deposed the same as PW.2. The Tribunal has failed to appreciate Ex.P1 and evidence of PW.2 in proper perspective. The second respondent has not let in any evidence to show that the appellant did not travel along with goods belonging to PW.2 and more than two persons travelled in the Cabin along with driver.

11. In view of Ex.P1 and the evidence of PW.1 and PW.2, I hold that the appellant travelled in the Mini Door Auto as representative of the owner of 5 bags of Mangoes. For the above reasons, the award of the Tribunal dismissing the claim against the second respondent is set aside. The second respondent as insurer of the Mini door Auto, is liable to pay compensation. As far as the quantum of compensation is concerned, the Tribunal considered the age of appellant and nature of the injuries awarded the compensation, which is just and proper. There is no reason to interfere with the said finding of the Tribunal.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/
Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar(CS-IV)

To

1.The Motor Accidents Claims Tribunal / Special Sub Court,
Dindigul.

2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.(2 COPIES)

+1cc to Mr.S.SRINVASA RAGHAVAN, Advocate, SR.No. 81223

+1cc to Mr.A.SARAVANAN, Advocate, SR.No. 81244

CMA(MD).No.562 of 2015
30.08.2018

TRP