



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2018

CORAM

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THE HON'BLE MS.JUSTICE V.M.VELUMANICMA(MD) No.818 of 2018
and C.M.P.(MD) No. 9170 of 2018

United India Insurance Co. Ltd.,
Branch Office No.III,
through its Branch Manager,
91, Kamarajar Salai,
Madurai.

.. Appellant/4th Respondent**-Vs-**

1.Kalidasan
2.Ganesan

.. 1st Respondent/Claimant

3.Branch Manager,
The New India Assurance Co. Ltd.,
41/3, Victoria Street,
Tuticorin

4.Shanmuganathan

... Respondents 2 to 4/Respondents 1 to 3

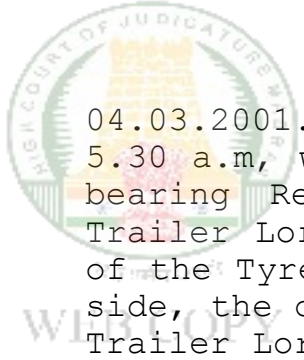
PRAYER: Civil Miscellaneous Appeal - filed under Section 173 of Motor Vehicle Act,1988, to set aside the Fair Order and Decreetal order made in M.C.O.P.No.33 of 2002 dated 10.05.1995 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

For Appellant : Mr.J.S.Murali
For R3 : Mr.Vijaya Karthikeyan

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the Fair Order and Decreetal order, made in M.C.O.P.No.33 of 2002, dated 10.05.1995, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

2. The first respondent filed M.C.O.P.No.33 of 2002 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Sivagangai, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on



04.03.2001. According to the first respondent, on 04.03.2001 at 5.30 a.m, while the first respondent was travelling in Mahindra Van bearing Reg.No.TN-63-B-2070, from Othakadai to Tirunelveli, one Trailer Lorry bearing Reg.No.TN-29-J-0786 was moving slowly, as one of the Tyres got punctured. As a lorry was coming from the opposite side, the driver of the Mahindra Van stopped the Van just behind the Trailer Lorry. At that time, a Goods Van bearing Reg.No.TN-69-D-8590 driven by its driver in a rash and negligent manner dashed against the Mahindra Van, in which the first respondent was travelling. Due to that, the Mahindra Van got almost sandwiched between the Trailer Lorry and the Goods Van. In that accident, the petitioner sustained grievous injuries.

3. Before the Tribunal, the first respondent examined himself as P.W.1 and one Doctor Rajendran was examined as P.W.2 and marked 14 documents as Ex.P.1 to Ex.P.14. On the side of the appellant and the respondents 2 to 4, no witness was examined and no document was marked.

4. The Tribunal, considering the pleadings, both oral and documentary evidence let in by the claimants, held that the drivers of the second and fourth respondents are jointly responsible for the accident and directed the respondents 2 and 3 to pay 50% of the total compensation of Rs.1,80,000/- and also directed the fourth respondent and the appellant to pay the remaining 50% to the first respondent.

5. The appellant has come out with the present appeal challenging the award of the Tribunal directing the appellant to pay 50% of compensation to the first respondent.

6. The learned counsel appearing for the appellant contended that the Tribunal failed to consider the evidence of P.W.1 that the driver of the fourth respondent was responsible for the accident and the Tribunal erred in directing the appellant to pay 50% of compensation. Further, the amount of compensation awarded by the Tribunal is excessive.

7. Heard the learned counsel for the appellant and third respondent and perused the materials available on record.

8. From the evidence of P.W.1, it is seen that both the drivers of the second and fourth respondents are responsible for the accident. But on the side of the appellant and the respondents 2 to 4, no witness was examined to disprove the same. As per the Wound Certificate Ex.P.11, the Tribunal awarded Rs.5000/- for pain and suffering. The first respondent has produced medical bills for a sum of Rs.4975/- and therefore, the same was awarded. The Tribunal partly accepted Ex.P.6 medical receipt and awarded Rs.1000/-. Further a sum of Rs.5975/- was awarded for medical expenses. Considering the age and income of the first respondent, Rs.4025/- was awarded towards extra nourishment. Though the first



respondent completed M.A degree, there is no proof for his avocation and as per Ex.P.5 and Ex.P.11 it is seen that the first respondent suffered 48% permanent partial disability, and therefore, the Tribunal awarded Rs.65,000/- towards permanent partial disability. The Tribunal, considering the fact that the first respondent had not appointed in any job and his educational qualification, awarded a sum of Rs.1,00,000/- for loss of income. Totally, a sum of Rs.1,80,000/- was awarded as compensation by the Tribunal. There is no error in the award of the Tribunal and the same is confirmed.

9. While calculating the compensation amount awarded under the above heads, it is seen that the total award amount comes to Rs.1,85,975/-, but in the judgment and decree passed by the Tribunal, it has been wrongly mentioned as Rs.1,80,000/-.

10. The appellant and the third respondent/Insurance Companies are directed to deposit Rs.1,85,975/- with interest and costs to the credit of M.C.O.P.No.33 of 2002, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Sivagangai, within a period of four weeks from the date of receipt of a copy of this Judgment, if not deposited already. On such deposit, the first respondent/claimant is permitted to withdraw the amount with interest by making necessary application before the Tribunal.

11. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected C.M.P.(MD) No.9170 of 2018 is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Sivagangai.

2.The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 85299

CM

TE : 06/03/2019 : 3P/5C