

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.496 of 2004
and
C.M.P.No.2541 of 2004

New India Assurance Company Ltd.,
rep.by Branch Manager,
Kambam, Theni District. ... Appellant /2nd Respondent

Vs

1. Padmanabhan
2. Dhandapani
(R2 set exparte before the Tribunal)... Respondents/Petitioner &
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 17.06.2003 made in MACT OP No.873 of 2000 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) Nagapattinam.

For Appellant : Mr.Krishnamoorthy

For R1 : No appearance

J U D G M E N T

This appeal is preferred by the Insurance Company against the award of a sum of Rs.80,571/- towards compensation to the first respondent/claimant due to the injuries sustained by him in a motor vehicle accident.

2. The case in brief, is as follows:

On 19.04.2000, at about 3.00 hours, the first respondent/claimant and others were travelling in a Tractor bearing Regn.No.TCA-1983 and Trailer bearing Regn.No.TNO-8410, belonging to the second respondent. When they were proceeding on Annakudi Road, due to rash and negligent driving on the part of the driver of the vehicle, the first respondent/claimant fell down and sustained crush injury over his right leg, besides receiving other injuries all over the body. He filed a claim petition claiming a sum of Rs.3,50,000/- as compensation. On consideration of the materials and evidence available on record,

the Tribunal awarded a total compensation of Rs.80,571/- with interest at the rate of 9% per annum from the date of petition. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant submitted that the vehicle involved in the accident has been insured only to use it for agricultural purpose, whereas the injured had travelled in the same as an unauthorised passenger and hence, the Insurance Company is not liable to pay any compensation. He further submitted that the compensation awarded by the Tribunal is excessive and exorbitant and hence, the same has to be reduced substantially.

4.Heard the learned Counsel for the appellant and perused the materials available on record carefully and meticulously.

5.Despite service of notice and the name of the first respondent having been printed in the cause list, there is no representation on his behalf. However, considering the passage of time, this Court is inclined to proceed with this appeal, on merits.

6.It was put forth before the Tribunal on the side of the Insurance Company that there was violation of policy conditions by the owner of the vehicle by permitting the injured to travel in the tractor-cum-trailer unauthorisedly and the vehicle was not used for agricultural purpose. On considering the materials and evidence available on record, the Tribunal has observed that the tractor was covered by a valid insurance policy; and the claimant, while travelling in the vehicle, fell down and sustained grievous injuries, due to rash and negligent act on the part of the driver of the tractor and ultimately, directed the appellant insurance company to pay compensation on behalf of the owner of the vehicle. This Court is of the view that when P.W.1/claimant in his evidence categorically admitted that due to overload of persons travelled in the vehicle, he fell down and sustained injuries, while the driver was driving the vehicle across the path-hole and there was no evidence to the effect that the vehicle was used for agricultural purpose, there was clear-cut violation of the policy conditions by the owner of the vehicle. In such circumstances, the Tribunal ought to have directed the appellant insurance company to pay compensation first and then, recover the same from the owner of vehicle, but, it failed to do so. Hence, this Court is inclined to modify the finding of the Tribunal to that effect alone and is accordingly, modified.

7.As regards the quantum of compensation, P.W.1/first respondent/claimant in his evidence, deposed that he was aged 32 years and was earning a sum of Rs.4000/- per month; and in the

accident, he sustained crush injury in his right leg, besides receiving grievous injuries all over the body. As per Ex.P5-disability certificate, he suffered permanent disability at 60%. The Tribunal, after considering the materials and evidence let-in by the first respondent/ claimant, quantified the compensation under the head "loss of income due to disability" at Rs.75,571.20 and Rs.5,000/- towards pain and suffering and in totalling, a sum of Rs.80,571.20 rounded off at Rs.80,571/- as total compensation. Having regard to the nature of the injuries sustained by the first respondent/claimant, the amounts so awarded by the Tribunal under the above heads, are just and very reasonable and hence, the same are hereby confirmed by this Court.

8.In such view of the matter, this appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant Insurance Company is directed to first deposit the compensation amount as awarded by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment and then, recover the same from the owner of the vehicle, in accordance with law. On such deposit being made, the Tribunal shall transfer the amount lying in the deposit to the savings bank account of the first respondent/claimant through RTGS within a period of one week thereafter.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal
Principal District Judge,
Nagapattinam.

2.The Section Officer,
VR Section,
High Court,
Madras.

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