

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.3708 OF 2005

M.Balaraman

.. Appellant/Claimant

Vs.

1. Mariyadoss

2. Divisional Manager,
New India Assurance Co. Ltd.,
No.514-515, Gandhi Road,
Kancheepuram.

.. Respondents 1 & 2/
Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.09.2003 made in MACTOP.No.274 of 1999, on the file of the Motor Accidents Claims Tribunal, (Additional District Judge, Fast Track Court, Kancheepuram).

For Appellant : Mr.N.Veerassamy
For R2 : Mr.M.Krishnamoorthy
R1 : No Appearance

J U D G M E N T

This appeal has been filed by the appellant/claimant against the judgment and decree dated 15.09.2003 passed by the Tribunal in MCOP.No.274 of 1999. सत्यमेव जयते

2.The case in brief, is as follows:

On the fateful day, i.e., on 28.12.1998, about 7.30am, the appellant/claimant was travelling in the mini lorry bearing Registration No.TN 21 A 5313 belonging to the first respondent and insured with the second respondent, along with his goods. When the vehicle was proceeding from Thirupukuzhi to Cheyyar, near Krishna Arts College, Keezhambi, the driver of the mini lorry drove the vehicle in a rash and negligent manner and dashed against a culvert and skidded down. Due to the said impact, the appellant sustained grievous injuries. Stating so, he filed a claim petition, claiming compensation of

Rs.1,50,000/-. The Tribunal, after considering the oral and documentary evidence, awarded a total compensation of Rs.75,000/- with interest at 9% per annum from the date of petition, which shall be payable by the first respondent/owner of the vehicle. The claim petition was dismissed as the second respondent insurance company. Aggrieved over the same, the appellant/claimant has preferred this appeal.

3.The learned counsel for the appellant/claimant submitted that there was no violation of the policy conditions and the appellant/claimant travelled in the goods vehicle as a loadman and hence, the Tribunal ought to have directed the second respondent insurance company to pay compensation to the claimant. The learned counsel further submitted that the compensation awarded by the Tribunal is inadequate, considering the nature of the injuries sustained by the appellant/claimant and hence, the same has to be enhanced substantially.

4.The learned counsel for the second respondent Insurance Company submitted that there is no liability on the insurance company as the mini lorry involved in the accident is a goods vehicle and the owner of the vehicle permitted the driver to carry 50 passengers to travel in the mini lorry in violation of the policy conditions; the Tribunal, after properly analysing the materials and evidence available on record, has awarded the just compensation; and hence, no interference is called for.

5.Heard the learned counsel appearing for the appellant and learned counsel appearing for the second respondent and perused the materials available on record.

6.There is no dispute with regard to the factum of accident and the manner in which the accident had occurred. The appellant has questioned only the findings of the Tribunal on liability and quantum of compensation.

7.With regard to liability, the Tribunal has observed that the vehicle involved is a goods vehicle and nearly 50 persons had travelled in the same unauthorisedly at the time of accident and thereby, the owner of the vehicle has violated the policy conditions. After observing so, the Tribunal has fastened the liability on the owner of the vehicle and exonerated the insurance company in toto. This Court is of the view that the finding so rendered by the Tribunal is incorrect, as there is no grievance with regard to the existence of the insurance policy between the insured and the insurer at the time of accident. In such circumstances, the Tribunal ought to have directed the insurance company to pay compensation at the first instance and then recover the same from the owner of the vehicle. Hence, the finding of the Tribunal is modified to that extent.

8.As regards the quantum of compensation, the Tribunal has awarded Rs.10,000/- towards extra nourishment, Rs.45,000/- towards permanent disability and Rs.10,000/- towards loss of earning capacity, which, in the opinion of this Court, are just and reasonable, considering the materials and evidence adduced by the appellant/claimant and having regard to the facts and circumstances of the case and hence, the same need not be interfered. However, the award of Rs.10,000/- towards pain and suffering, appears to be on the lower side and the same is hereby enhanced to Rs.20,000/-, taking into account the nature of injuries sustained and the period of treatment taken by the appellant/claimant. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.75,000/- to Rs.85,000/-. It is made clear that the enhanced sum of Rs.10,000/- shall carry interest at 7.5%pa from the date of filing of this appeal.

9.In the result, this appeal is partly allowed. No costs. The second respondent/Insurance Company is directed to deposit the aforesaid compensation amount of Rs.85,000/- along with interest and costs, within a period of four weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the first respondent/owner of the vehicle in accordance with law. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the appellant/claimant through RTGS within a period of one week thereafter.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
(Motor Accidents Claims Tribunal)
Fast Track Court, Kancheepuram.

+1cc to Mr.N.Veerasingh, Advocate, S.R.No.66687
+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.66521

C.M.A.No.3708 of 2005

TM(CO)
CS/13/10/2020