

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :25.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.3525 of 2008

and

M.P.No. 1 of 2008

The Divisional Manager,
Divisional Office,
National Insurance Co. Ltd.,
Nehru Street, Pondicherry. ... Appellant/4th Respondent

Versus

1. Radhakrishnan

2. Ponnusamy

3. Branch Manager,
United India Insurance Co Ltd.,
Tindivanam

4. M/s. Maruthamalai Murugan Transport,
No. 194/G.N.T. Red Hills, Chennai.

... Respondents/Petitioner and
Respondents 1 to 3

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 to set aside the Judgment and Decree dated 21.12.2006 made in M.A.C.T.O.P.No. 328 of 2006 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.1 Tindivanam (Tindivanam Sub Court No.1120/2002).

For Appellant : Mr.S. Vadivel

For Respondents : Mr.M. Tamil Thendral Arasu for
Mr. P. Mani(for R1)

: No Appearance(for R2)
: Mr.M.J. Vijaya Raghavan(for R3)
: Mr. Ravichandran(for R4)

JUDGMENT

The appellant/Insurance Company has come forward with this appeal Challenging the Judgment and Decree dated 21.12.2006 made in M.A.C.T.O.P.No. 328 of 2006 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.1 Tindivanam.

2. The brief facts which are necessary for the disposal of this appeal, are as follows:

On 11.10.2009 the first respondent herein/claimant was driving the 4th respondent's vehicle from Bangalore and while nearing Jogi halli village, the second respondent's vehicle came in the opposite direction and dashed the first respondent's vehicle. As a result of which, the second respondent's vehicle was capsized on the spot. For the injuries sustained by him, the first respondent herein/claimant has filed the claim petition before the Tribunal claiming a sum of Rs.3,00,000/- as compensation.

3. Before the Tribunal, the injured/claimant examined himself as P.W.1 and Doctor was examined as P.W.2 and documents Exs.P1 to P.49 were marked on the side of the injured/claimant. No witness was examined and no document was marked on the side of the respondents before the Tribunal.

4. The Tribunal after considering both oral and documentary evidence adduced on the side of the claimant, has awarded a sum of Rs.2,64,400/- and directed respondents 1 and 2 before the Tribunal jointly and severally to pay 50% of the award amount i.e., Rs.1,32,200/- and also directed respondents 3 and 4 before the Tribunal jointly and severally to pay 50% of the award amount i.e. Rs.1,32,200/-. As against the said award passed by the Tribunal, the insurance company has preferred this appeal before this Court.

5. The learned counsel appearing for the appellant/Insurance company would contend that the Tribunal is erred in fixing 50% of liability upon the appellant / Insurance Company. It is further contended that the Tribunal ought not to have apportioned the negligence equally to the respondents before the Tribunal simply on the basis that admittedly the author of the Ex.P.1-FIR is the cleaner of the lorry bearing Registration No.TN-30-8899 and hence, prays for allowing of this appeal.

6. Per Contra, the learned counsel appearing for the first respondent/claimant would submit that due to the accident, the claimant has sustained head injuries with skull fracture, fracture on the right thigh(femur bone), fracture on left knee

and fracture in forearm and greivous injuries to all over the body. Initially, he was admitted in Government Hospital, Kollembella for treatment and then he was admitted in Government Hospital, Chennai and he was in continous treatment. Due to the accident, the claimant was unable to do his work and hence, the learned counsel for the first respondent/claimant prays for enhancement of the compensation amount awarded by the Tribunal.

7. Heard both sides.

8. It appears that the Tribunal, after considering both oral and documentary evidence adduced by the claimant, has come to the conclusion that the accident had occurred due to the rash and negligent driving of both the vehicles and awarded compensation of Rs.2,64,400/- and fixed 50% of the liability as against one Ponnusamy/second respondent herein and Branch Manager United India Insurance Company Limited, Tindivanam/third respondent herein, and also fixed 50% of the liability as against Maruthalamali Murugan Transport/4th respondent herein and Divisional Manager, National Insurance Company Limited, Pondichery, appellant herein.

9. It is seen from the oral evidence of P.W.1/claimant that the driver of the offending Lorry came in a rash and negligent manner in the opposite direction and hit against his vehicle and hence, the offending vehicle viz., second respondent's vehicle capsized. However, it is seen from the document Ex.P.1-FIR given by the cleaner of the offending Lorry bearing Registration No.TN-30-8899 that the accident has taken place due to the rash and negligent driving of the driver of the fourth respondent herein viz., the claimant himself. With regard to the manner of the accident, the victim of the accident namely, the claimant examined himself as P.W.1, who deposed his version and on behalf of the offending vehicle, neither the driver nor the cleaner, who had lodged Ex.P.1-FIR was examined. The Tribunal, taking note of the fact that the accident had occurred due to head on collision in the middle of the road and both the vehicle had suffered damages, held that the drivers of both the vehicles are contributory to the accident and accordingly, fixed the liability on the drivers of both vehicles at 50:50 and hence, such a finding arrived at by the Tribunal is well considering and well merited on the facts of the case from the documents available on record.

10. The learned counsel appearing for the appellant/Insurance Company would contend that since the claim petitioner himself being atort feasor, the third respondent-Insurance Company cannot be mulcted with liability. It remains to be stated that before the Tribunal, the appellant/Insurance Company has not adduced any oral or documentary evidence much

less non marking of policy copy of the insurance coverage to the vehicle in which the claimant has travelled and the Tribunal was not in a position to ascertain as to whether any additional premium was paid to extend the coverage to the driver or cleaner who travelled in the Lorry or whether it is a comprehensive policy or not, is unknown. In the absence of any details of policy of Insurance and for want of evidence, the point is answered against the appellant and the contention of the learned counsel for the appellant/Insurance company stands negatived. .

11. On the point of enhancement of compensation suo motu, this Court finds that on a perusal of the evidence of P.W.1/claimant adduced before the Tribunal, it is seen that the claimant has not produced any proof with regard to the salary. But the Tribunal considering the age of the claimant, applied multiplier method and arrived a sum of Rs.2,34,000/- as loss of income. Further, the claimant has produced medical receipts as Exs.P.4, P.10, P.13, P.23, and P.33 to P.40 and hence, the Tribunal has awarded a sum of Rs.15,400/- under the head of Medical Expenses. Under the head of pain and sufferings, the Tribunal has awarded a sum of Rs.10,000/- For Transportation, a sum of Rs.5,000/- was awarded by the Tribunal. In total, the Tribunal has awarded a sum of Rs.2,64,000/- as compensation to the claimant. Hence, the compensation awarded by the Tribunal under various heads appears to be just and fair and it does not require any enhancement and therefore, the plea raised by the learned counsel for the respondent/claimant also stands negatived. Hence, the appeal is liable to be dismissed.

10. In the result,

[i] this appeal is dismissed and the award dated 21.12.2006 passed by the Motor Accident Claims Tribunal, (Fast Track Court No.1), Tindivanam, in M.C.O.P.No.328 of 2006, is confirmed.

[ii] if the award amount with accrued interest has not been deposited, the appellant-Insurance Company is directed to deposit 50% of award amount with accrued interest at the rate of 7.5% per annum from the date of claim petition with costs, to the credit of M.C.O.P.No.328 of 2006 on the file of the Motor Accident Claims Tribunal, (Fast Track Court No.1) Tindivanam, within a period of eight weeks from the date of receipt of a copy of this Judgment.

[iii] On such deposit being made, the first respondent herein/claimant is permitted to withdraw the same, less the amount already withdraw, if any.

[iv] Consequently, connected miscellaneous petition is closed.

[v] There shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1. The Judge

Fast Track Court-I Motor Accident Claims Tribunal,
Tindivanam.

2. The Section Officer,

V.R. Section, High Court, Madras - 104.

+1 CC to Mr.P. Mani, Advocate sr 28461.

+1 CC to Mr.S. Vadivel, Advocate sr 28241

+1 CC to Mr.M.J. Vijaya Raghavan, Advocate sr 27862.

CMA No.3525 of 2008
and
M.P.No.1 of 2008

KK(CO)
SP(09/06/2020)

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