

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 25.03.2019]

[PRONOUNCED ON : 14.08.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1760 of 2010

P.Srinivasan ... Appellant/Claimant

... Vs ...

1. V.Appusamy
 2. National Insurance Co. Ltd., D.O.II,
Salem - 7.
 3. R.Baskar
 4. National Insurance Co. Ltd., D.O.II,
Salem - 7. ... Respondents
- [Respondents 1 and 3 set ex-parte
before the Tribunal]

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, against the award passed in M.C.O.P.No.2144 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.2, Salem, dated 17.08.2009.

For Appellant : Mr.Tranquebar Doraivasu
for Mr.K.Kuppusamy
For RR-1 & 3 : Ex-parte
For RR-2 & 4 : Mr.K.Padmanabhan

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimant against the award passed by the Motor Accidents Claims Tribunal, [Additional District Judge], Fast Track Court No.2, Salem, in M.C.O.P.No.2144 of 2004, dated 17.08.2009, on the ground that the insurance company ought not to have been exonerated by the Tribunal from its liability and also on the point of quantum.

2. The appellant herein/claim petitioner has filed the above claim petition alleging that on 22.10.2004 at 6.15 a.m., the claim petitioner was travelling as a Cleaner in the first respondent's Lorry bearing Registration No.TN-28-V-7257 and while nearing Pallagoundampalayam on the Perundurai to Kovai Main Road, the driver of the Lorry drove the same in a rash and negligent manner and dashed against one city travels bus bearing Registration No.TN-28-V-5454, which came at the opposite side in a slow and careful manner. Due to which, both the vehicles were severely damaged and the claim petitioner has also sustained severe fracture injuries all over the body. Immediately, the claim petitioner was admitted in the Kovai Medical Centre Hospital at Erode. For the injuries sustained by him in the said accident, the injured/claimant has filed the above claim petition claiming a sum of Rs.4,50,000/- as compensation.

3. In the counter affidavit filed by the second respondent herein/Insurance company, they have raised a plea that the injured in the accident has travelled as an unauthorised passenger and the same is in violation of the terms and conditions of the policy and therefore, the insurance company has to be exonerated from any liability.

4. Before the Tribunal, on behalf of the claimant, the injured/claimant examined himself as P.W.1; Dr.Sridhar was examined as P.W.2 and one Appusamy was examined as P.W.3 and documents Exs.P.1 to P.6 were marked. On the side of the respondents before the Tribunal, no witness was examined and no document was marked.

5. The Tribunal, after considering both oral and documentary evidence adduced on the side of the claimant, awarded a sum of Rs.2,37,400/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit as compensation to the claimant and directed the first respondent herein/owner of the Lorry to deposit the same. Further, the Tribunal had dismissed the claim petition insofar as respondents 2 to 4 herein are concerned. As against the said award passed by the Tribunal exonerating the insurance company from its liability and also seeking enhancement of compensation, the claimant had preferred this civil miscellaneous appeal before this Court.

6. On a perusal of records, it appears that after taking into consideration the evidence of the claimant/P.W.1 coupled with the documentary evidence Ex.P.1-Xerox copy of FIR, the Tribunal has held that the accident has taken place due to the

rash and negligent driving of the driver of the first respondent's Lorry in which the injured/claimant has travelled. It is also observed that as per the document Ex.P.1-FIR given by the owner of the bus bearing Registration No.TN-28-V-5454, it appears that the accident has taken place due to the rash and negligent driving on the part of the driver of the first respondent's Lorry and hence, in the absence of any challenge to the said finding, the same is hereby confirmed.

7. P.W.1, in his evidence, has specifically stated that he has travelled in the Lorry owned by the first respondent as a part time Cleaner and due to the accident, he has sustained injuries and in respect of the injuries, he has examined P.W.2 Dr.Sridhar and marked Ex.P.2-Discharge Summary, Ex.P.3-Medical Bills, Ex.P.4-Disability Certificate and Ex.P.5-X-ray. Furthermore, to substantiate his plea that he was working as a part time Cleaner, he has examined his employer namely, Appusamy as P.W.3.

8. On a perusal of the evidence of P.W.3/Appusamy, the employer of the Lorry owner, it is clear that the injured was working as a part time Cleaner and the reason assigned by the Tribunal for disbelieving the evidence of P.W.3 is not legally acceptable and with regard to the employment and payment, his evidence is kept intact. It appears that the Tribunal has taken a tangent view of the matter and held that the claimant is not a part time Cleaner.

9. It remains to be stated that due to the multiple economical criteria, persons studying in ITI also worked as a part time Cleaner and in fact, the evidence of P.W.3 is also clear to that effect. While that being so, the reason assigned by the Tribunal to disbelieve the evidence of P.W.3 is not legally acceptable. On a combined reading of the chief and cross examination of P.W.3, this Court is of the considered view that the evidence of P.W.3 is acceptable one and the injured/claimant has travelled in the Lorry belongs to the first respondent as a part time Cleaner which is covered under the insurance policy and hence, the award passed by the Tribunal exonerating the second respondent herein/insurance company is liable to be set aside and accordingly, the same is set aside. R.1 being the owner of the Lorry and R.2 being the insurer of the Lorry are jointly and severally liable to pay the compensation to the claimant.

10. On the point of quantum, after going through the evidence of P.W.1, the quantum of compensation awarded by the

Tribunal under various heads, is found to be just and reasonable and accordingly, the same is hereby confirmed.

11. In the result,

[i] The Civil Miscellaneous Appeal is allowed and the award passed by the Motor Accidents Claims Tribunal, [Additional District Judge], Fast Track Court No.2, Salem, in M.C.O.P.No.2144 of 2004, dated 17.08.2009, is confirmed.

[ii] The interest granted by the Tribunal at 7.5% also stands confirmed.

[iii] Respondents 1 & 2 herein are directed to deposit the award amount jointly and severally, less the amount already deposited, if any, along with accrued interest and costs to the credit of M.C.O.P.No.2144 of 2004, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.2, Salem, within a period of eight weeks from the date of receipt of copy of this judgment;

[iv] On such deposit being made, the appellant herein/claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, with proportionate interest and costs by making necessary application before the Tribunal.

[v] No order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

Jr1
To

1. The Additional District Judge,
The Motor Accidents Claims Tribunal,
Fast Track Court No.2, Salem.

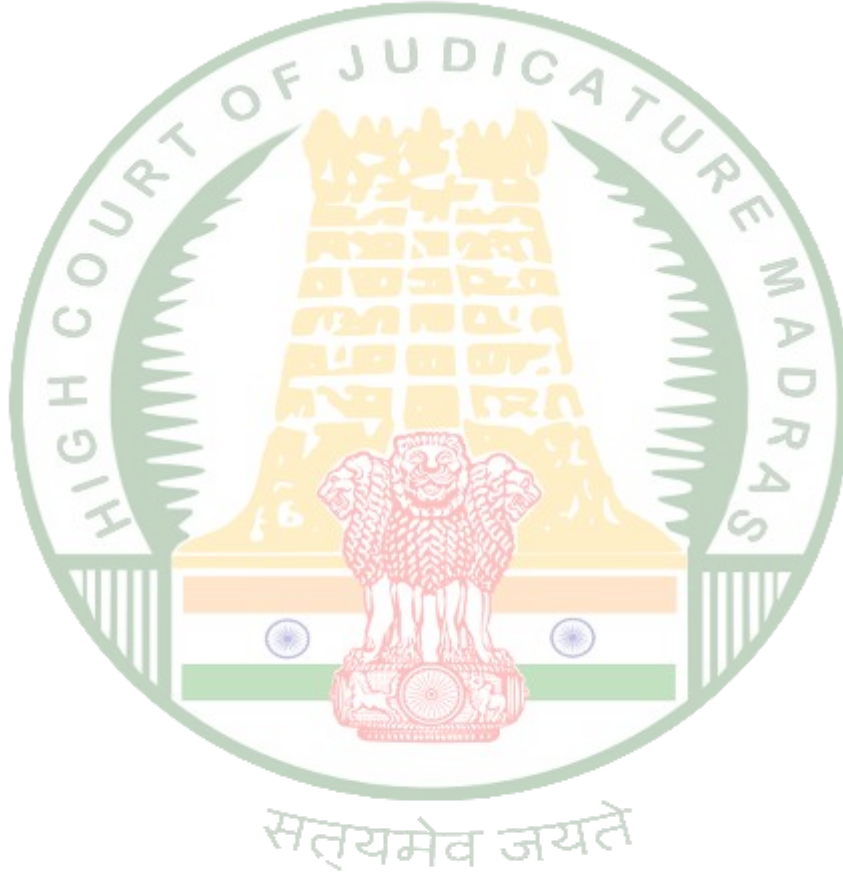
2. The National Insurance Co. Ltd., D.O.II,
Salem - 7.

3. The Section Officer,
V.R. Section, High Court,
Madras.

+1 cc to M/s.K.Padmanabhan Advocate sr69258

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