

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3978 of 2008
and
M.P.No.1 of 2008

M/s.National Insurance Company Ltd.,
No.15, Thanthai Periyar Marketing Complex,
Salem.Appellant/4th Respondent

Vs.

1.M.Selvarani
2.Palanisamy
3.M/s.United India Insurance Company Ltd.,
Branch Office,
Attur Road, Rasipuram
4.P.Kumerasean
(Respondents 2 and 4 remained exparte) Respondents/
Petitioners/Respondent 1 to 3

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 07.09.2006 made in MCOP.No.624 of
2004 on the file of the Motor Accidents Claims Tribunal
(FTC.No.III, Additional District Judge) Namakkal.

For Appellant : M/s.Rathna Thara

For Respondents : Mr.N.Umapathi for R1
M/s.Sree Vidhya for R3

JUDGMENT

This appeal is preferred by the appellant Insurance Company
against the award of a sum of Rs.46,300/- towards compensation
to the first respondent, due to the injuries suffered by her in
a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, i.e., on 06.02.2002, the first respondent / claimant was travelling as a passenger in the bus bearing Reg.No.TN30 C 5559 belonging to the fourth respondent and insured with the appellant insurance company, from Salem to Namakkal. At about 07.00 p.m., the second respondent's Tractor bearing Regn.No.TN28-D-2865 insured with the third respondent insurance company, which was going in front of the bus, suddenly turned to right side in a rash and negligent manner and dashed against the bus. Due to the said impact, the first respondent sustained fracture and injuries all over the body. She filed a claim petition claiming a compensation of Rs.6,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.46,300/- with interest at the rate of 7.5% 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 Insurance Company has only disputed the findings of the Tribunal on negligence as against the driver of the bus insured with the appellant Insurance Company. According to him, when the first respondent/claimant herself pleaded in the claim petition that the accident occurred due to the negligent act on the part of the driver of the tractor and the same was supported by Ex.P1 First Information Report, Ex.P2-charge sheet and Ex.P6-judgment of the Criminal Court, the Tribunal ought not to have concluded the issue of negligence as against the driver of the bus insured with the appellant insurance company. Hence, the learned counsel prayed to set aside the said findings of the Tribunal.

4.Per contra, the learned counsel for the first respondent/claimant and the learned counsel for the third respondent Insurance company submitted that the Tribunal, after analysing the oral and documentary evidence adduced by the parties, has rightly rendered its findings on negligence and fixed the liability on the appellant insurance company and determined the just compensation and hence, the same warrants no interference at the hands of this Court.

5.Heard the learned counsel appearing on either side and perused the materials available on record carefully and meticulously.

6.As the appellant insurance company has only questioned the negligence aspect, this Court is not inclined to go into the quantum of compensation awarded by the Tribunal and the same is hereby confirmed.

7.P.W.1/claimant has deposed in her evidence that the driver of bus, in which, she was travelling, drove the vehicle in a moderate speed observing the traffic rules; the driver of the tractor bearing Regn.No.TN28 D 2865 drove it in a rash and negligent manner in front of the bus and suddenly turned to the right side, without giving any signal, due to which, the tractor dashed against the bus. The testimony of P.W.1 was substantiated by Ex.P1-FIR, Ex.P2-charge sheet, Ex.P4-Motor vehicle Inspector's report and Ex.P6-criminal court judgement, wherein, the driver of the tractor admitted his guilt and paid the fine. However, P.W.1, during his cross examination, has controverted the same. Taking note of the same, the Tribunal has drawn an adverse inference against the driver of the bus and observed that the law is that a vehicle which is following another vehicle, has to maintain 10m distance from the vehicle proceeding ahead and has to be well within such speed in which, in the event, any emergency arises, one is able to stop one's vehicle to avoid the accident, whereas the driver of the bus appears to have not taken care and caution to the requisite extent to avoid the accident; and had the driver of the bus followed the prescribed rules, he could have averted the accident. Observing so, the Tribunal concluded that the accident had occurred, due to the fault on the part of the driver of the bus and accordingly, fixed the liability on the appellant insurance company to pay compensation to the first respondent/claimant. The said findings rendered by the Tribunal are perfectly valid and the same do not call for any interference by this Court.

8.In such view of the matter, the Civil Miscellaneous Appeal is dismissed, confirming the award passed by the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered 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. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the first respondent / claimant through RTGS within a period of one week thereafter.

Sd/-
Assistant Registrar (CS-IX)

// True Copy//

Sub Assistant Registrar

gv

To

1.The Additional District Judge (FTC.No.III),
Motor Accidents Claims Tribunal,
Namakkal.

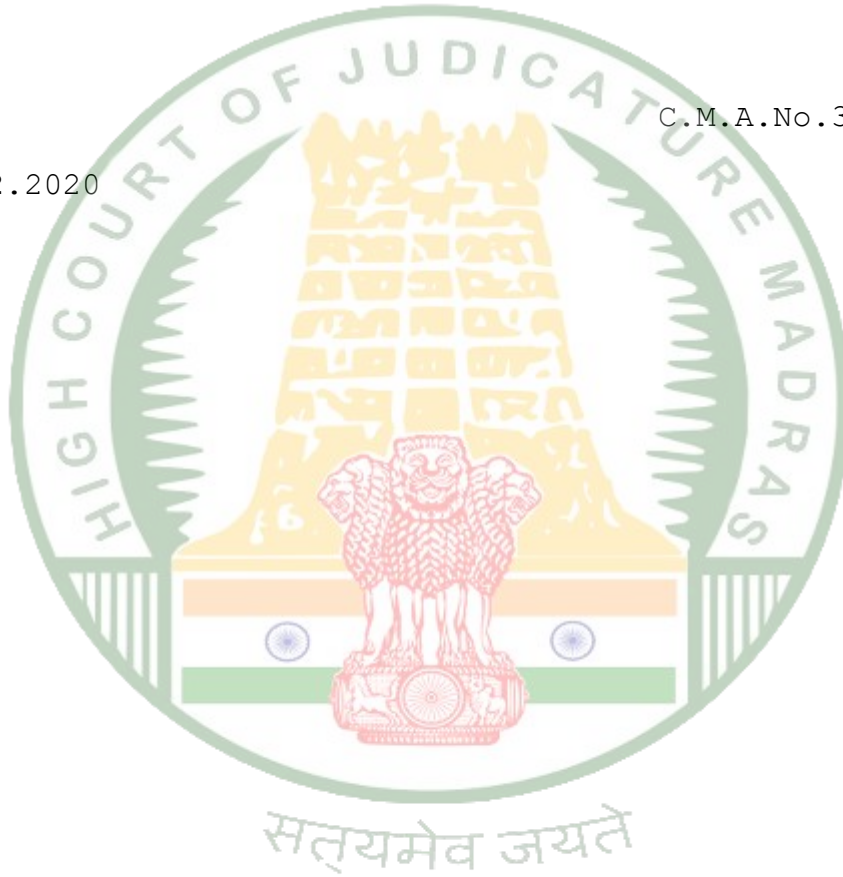
2.The Section Officer,
VR Section, Madras High Court.

+lcc to Mrs.R.Rathna Thara, Advocate, SR.No.64504.

+lcc to Mr.N.Umapathi, Advocate, SR.No.64187.

C.M.A.No.3978 of 2008

KK(CO)
CSR: 04.02.2020



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