

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2019

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

C.M.A.No.4014 of 2008

R.Namba Gounder

... Appellant/1st Respondent

Vs.

1.Gunasekaran

...1st Respondent/Claimant

2.The Manager,

National Insurance Co. Ltd.,

Attur.

... 2nd Respondent/II Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.08.2007 in M.C.O.P.No.95 of 2002 on the file of the Motor Accident Claims Tribunal (Sub Judge), Attur.

For Appellant : Mr.A.A.Venkatesan

For R1 : No appearance

For R2 : Mr.S.Arun Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 23.08.2007 in M.C.O.P.No.95 of 2002 on the file of the 'Motor Accident Claims Tribunal (Sub Judge), Attur' (hereinafter referred to as 'the Tribunal').

2.The brief facts of the case would run thus :

On 23.09.1998, the 1st respondent/claimant was riding his bicycle from Valasakalpatti to Gengavalli on the left side of the road in an average speed. At about 03.00 p.m., when he was nearing Forest Bungalow in Thammampatti-Gengavalli Main Road, the driver of the tractor (Swaraj-855) bearing Registration No.TN-27-X-3260, belonging to the appellant, drove the vehicle in a rash and negligent manner and hit the bicycle at its back. Due to the said impact, the 1st respondent was thrown out of his bicycle, resulting in fractures and grievous injuries all over the body. Immediately, he was taken to the Government Hospital at Attur and thereafter, he underwent treatment in the Government Hospital, Salem. The claimant later, filed a claim petition in M.C.O.P.No.95 of 2002, seeking a total compensation of

Rs.3,00,000/- (Rupees three lakhs only), before the Tribunal, which awarded a sum of Rs.90,000/- (Rupees ninety thousand only) with interest @ 7.5% p.a. from the date of claim petition, to be paid by the appellant/owner of the tractor.

3.Challenging the liability fixed on the appellant (owner of the tractor), the present appeal has been filed.

4.The learned counsel for the appellant has submitted that the appellant's tractor was not at all involved in the said accident and he assailed the finding of the Tribunal to that effect. He further contended that the appellant is not liable to pay any compensation and in any event, the amount awarded by the Tribunal is far and exorbitant.

5.Per contra, learned counsel appearing for the 2nd respondent Insurance Company refuted the contentions and submitted that the Tribunal has considered all the evidence and materials on record and has passed the impugned judgment, which has to be confirmed.

6.This Court gave its anxious consideration to the rival submissions and perused the records.

7.The 1st respondent (P.W.1) has deposed that, on 23.09.1998, when he was riding his bicycle from Valasakalpatti to Gengavalli, near Forest Bungalow in Thammampatti-Gengavalli Main Road, a tractor hit his bicycle from behind, due to which, he sustained grievous injuries and fractures.

8.Mr.Subramani (R.W.1), Senior Assistant, National Insurance Company, Attur, has deposed before the Tribunal that, the tractor, which has to be used for agricultural purposes, has been used for commercial purposes in this case, by carrying load in the trailer, which is against the guidelines framed in the policy of Insurance and this aspect has been correctly taken note of by the Tribunal.

9.Mr.Lakshmanan (R.W.2), Investigating Officer of National Insurance Company, has deposed before the Tribunal that, one Mr.Murugesan, son of the appellant, had driven the tractor and caused the accident and he did not hold a valid driving licence at the time of accident. The report of R.W.2 has been marked as Ex.R3.

10.It is to be noted that the driver of the tractor, involved in the accident, did not hold a valid driving licence at the time of accident, which has been ascertained by Mr.Mohankumar (R.W.4), Junior Assistant of Regional Transport Office, Attur. He has further ascertained that the appellant has been issued Registration Certificate for a tractor-trailer. The Tribunal, on considering all the evidence on record and upon perusal of charge-sheet (Ex.P4) and other

exhibits, came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the tractor, which, in the view of this Court, is correct.

11. Having regard to the fact that the driver of the tractor was not holding a valid driving licence at the time of accident and the tractor was used for carrying load, which is against the terms and conditions framed in the policy, relying upon the dictum of the Hon'ble Supreme Court, the Tribunal has rightly fixed the liability on the appellant (owner of the tractor), instead of fixing the liability on the Insurance Company, which according to this Court, is a fair and just decision and warrants no interference.

12. With regard to quantum of compensation, it is seen from the judgment that, the Tribunal has not awarded the entire amount, that was claimed by the 1st respondent, but, has restricted itself to award compensation, only for the losses, which are substantiated by evidence, and has awarded Rs.90,000/- (Rupees ninety thousand only), which, in this opinion of this Court, is just and appropriate and hence, the same need not be interfered.

13. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

14. The appellant 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 first respondent / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mkkn

To

1. The Motor Accident Claims Tribunal
(Subordinate Court),
Attur.

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

+1cc to Mr.A.A.Venkatesan, Advocate SR.61019
+1cc to Mr.S.Arunkumar, Advocate SR.60851

C.M.A.No.4014 of 2008

NR (CO)
CB(06/01/2021)



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