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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2019

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2702 of 2010

and

M.P.No.1 of 2010

The New India Assurance Co. Ltd.,
No.43-A/2, Juman Centre,
Promenade Road, Trichy. ... Appellant/Second Respondent

Vs.

1. Jagadeesan ... Respondent/Petitioner

2. J.Kandasamy

3. J.Mohan Ram

4. Tamil Nadu State Express Transport Corporation,
Tirunelveli. ... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree in M.C.O.P.No.97 of 2003 dated 18.03.2010 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr.E.Rajadurai

For R4 : Mr.K.J.Sivakumar

R1 & R2 - Served - No Appearance

R3 - Not Ready in Notice

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 18.03.2010 made in M.C.O.P.No.97 of 2003 on the file of the Chief Judicial Magistrate (Motor Accidents Claims Tribunal), Namakkal.

2. The case of the appellant is that on 18.06.2002 at about 2.30 a.m., the first respondent was traveling as a passenger in



the second respondent's Maruthi Van bearing Reg. No.TN-01-G-7754 from Kattupuththoor to Chennai. While the Van was coming near Kooththakudi Railway Gate at Chennai to Trichy Main Road, the driver of the Van drove it in a rash and negligent manner and dashed against one Bus bearing Reg. No.TN-01-N-6558 which belonged to the fourth respondent. Due to this accident, the first respondent was sustained grievous injuries on his Leg, Hand, Face and all over his bodies and immediately he was taken to Chennai Ulunthurpettai Government Hospital for first aid and then he was shifted to Arvinth Hospital at Namakkal for further treatment. In-spite of the treatment, he was not able to do any work and he suffered from Loss of Income. Hence he filed a petition before the Chief Judicial Magistrate (Motor Accidents Claims Tribunal), Namakkal, claiming Rs.20,00,000/- as compensation from the second and fourth respondents as they are the owners of the vehicles involved in the accident.

3. Denying the allegations, the appellant filed a counter affidavit stating that the accident had occurred only due to the rash and negligent act of the fourth respondent's driver and not due to the negligent act of the second respondent's driver. Further, it has been stated that the driver of the second respondent was not having valid driving licence at the time of accident and the first respondent has to strictly prove the same. Moreover, it has been stated that the alleged age, occupation and income of the first respondent are not correct and the amount of compensation claimed is also very high.

4. The Chief Judicial Magistrate (Motor Accidents Claims Tribunal), Namakkal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the first respondent and awarded Rs.3,01,880/- as compensation against the appellant and the fourth respondent i.e. Rs.1,96,222/- to be paid by the appellant and Rs.1,05,658/- to be paid by the fourth respondent. Aggrieved by the same, the appellant has filed this appeal before this Court.

5. The learned counsel appearing for the appellant would submit that the policy taken by the second respondent is only an Act Policy which covered the third parties and the same is not applicable for owner or passenger of the said vehicle and the Lower Court without considering the same erroneously fixed 65% of the liability on the appellant instead of fixing the same on the owner of the vehicle i.e. the second respondent herein.

6. In support of his arguments, the learned counsel for the appellant has relied upon the Judgment of the Hon'ble Apex Court reported in 2006 ACJ 1441 [United India Insurance Co. Ltd. Vs. Tilak Singh and others] as well as the Judgment of this Court reported in (2009) 2 MLJ 963 [Royal Sundaram Alliance Insurance



Co. Ltd., Coimbatore Vs. A.Meenakshi and Others].

7. Heard the learned counsel for the appellant and the learned counsel for the fourth respondent, and perused the materials available on record.

8. On perusal of the records, it is seen that the Policy taken by the second respondent is only an Act Policy which covered the third parties and as per which, the appellant is not liable to pay any compensation to the first respondent/claimant and only the owner of the vehicle i.e. the second respondent herein has to compensate the first respondent/claimant for the loss of income suffered by him. The Chief Judicial Magistrate (Motor Accidents Claims Tribunal), Namakkal, without considering the same has wrongly fixed 65% of the liability on the appellant. Hence, this Court is inclined to set aside the same and fix the same on the second respondent owner. As far as the quantum of compensation and the fixation of remaining 35% of the liability are concerned, this Court does not find any error and hence the same are hereby confirmed.

9. Accordingly, the second respondent is directed to deposit the 65% of the award amount i.e. Rs.1,96,222/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, and the remaining 35% of the award amount i.e. Rs.1,05,658/- shall be paid by the fourth respondent as fixed by the Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. After the entire amount has been deposited by the second and fourth respondents, the first respondent/claimant can withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn.

10. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate
(Motor Accidents Claims Tribunal), Namakkal.

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

+lcc to Mr.M.J.Sivakumar, Advocate, S.R.No. 102592

+lcc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 102170

C.M.A.No.2702 of 2010
and
M.P.No.1 of 2010

PP (CO)
GN (22/09/2020)