

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 14.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A. No.2820 of 2010 and

M.P.No.1 of 2010

The Branch Manager,
New India Assurance Company Limited,
Branch Office,
Bye Pass Road, Hosur Town. Appellant/3rd Respondent

Versus

1. Salammal 1st Respondent/Petitioner

2. P.Murugesan

3. National Insurance Company Limited,
Bangalore Road, Krishnagiri.
(R3 is not necessary party in this proceedings
and hence, given up) ...2 & 3 Respondents/Respondents 1 & 2

Prayer: This Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 17.12.2004 made in M.C.O.P.No. 1206 of 1994 on the file of Motor Accidents Claims Tribunal (I Additional District Court) Dharmapuri at Krishnagiri.

For Appellant :Mr.G. Muniratnam

J U D G M E N T

This appeal has been filed against the Judgment and Decree dated 17.12.2004 made in M.C.O.P.No. 1206 of 1994 on the file of Motor Accidents Claims Tribunal (I Additional District Court) Dharmapuri at Krishnagiri.

2. On 03.09.1992, when the first respondent was waiting in the road, a mini lorry bearing Registration No.TAE 1229, belonging to the 2nd respondent, driven by its driver in a rash and negligent manner, lost its control when the axle broke and dashed against the 1st respondent and others. As a result of

which, the 1st respondent sustained grievous injuries. The accident had occurred only due to the rash and negligent driving by the driver of the mini lorry belonging to the 2nd respondent. Hence, the first respondent has filed M.C.O.P.No. 1206 of 1994, before Motor Accidents Claims Tribunal (I Additional District Court) Dharmapuri at Krishnagiri, seeking compensation for a sum of Rs.1,50,000/-. The Tribunal, on a consideration of oral and documentary evidence, has awarded a sum of Rs.55,400/- payable with interest at the rate of 7.5% per annum.

3. Challenging the same as excessive and disproportionate, the appellant has filed this appeal.

4. Heard the arguments of the learned counsel for the appellant and perused the materials available on record. Notice was ordered on the respondents and the same is yet to be completed for service.

5. It is seen from the records that 14 persons including the first respondent herein/claimant, who had met the accident on 03.09.1992, have filed M.C.O.P.Nos.1191 to 1209, before the Motor Accident Claims Tribunal (I Additional District Court) Dharmapuri at Krishnagiri. The appellant herein had also filed C.M.A.No.3083 of 2018 before this Court against one Padhma, who is the Claimant in M.C.O.P.No.1197 of 2004, in which, this Court had dismissed the petition, vide order dated 21.12.2018 and confirmed the award passed by the lower Court. The relevant portion of the said order is extracted hereunder:

"11.From the materials on record, it is seen that Ex.P1, FIR shows that the accident had occurred due to rash and negligent driving by the driver of the mini lorry belonging to the 2nd respondent. Contrary to the facts stated in the FIR, P.W.1, claimant in other claim petition, filed for claiming compensation for the very same accident has deposed that the accident occurred when the claimants were waiting in the road. The Tribunal has concluded that FIR cannot stand as a substantial evidence to prove the manner of accident. R.W.1, Motor Vehicle Inspector in his evidence has deposed that 30 persons including the 1st respondent travelled in the mini lorry, in violation of permit and policy conditions and the accident occurred due to mechanical defect. The Sub-Inspector of Police who registered FIR was not examined to prove that the facts stated in the FIR was true. On the basis of the evidence on record and the documents filed to support the same, the Tribunal has held that the accident

occurred due to rash and negligent driving by the driver of the mini lorry belonging to the 2nd respondent as alleged by the 1st respondent. The Tribunal accepting the evidence of 1st respondent, on oath has held that the 1st respondent is entitled to compensation from appellant. I do not find any error in the said finding of the Tribunal.

12.As far as the quantum of compensation is concerned, the Tribunal considering Ex.P11, wound certificate, granted a sum of Rs.9,000/- towards pain and suffering. Though there is no evidence on record to show that the 1st respondent has taken treatment in the hospital as inpatient, the Tribunal considering the 1st respondent is a coolie, granted a sum of Rs.600/- towards loss of income for the period of treatment. The Tribunal granted a sum of Rs.100/- each towards transportation charges and extra nourishment. The Tribunal after considering both the oral and documentary evidence, awarded a total sum of Rs.9,800/- as compensation to the 1st respondent/claimant. In my considered opinion, the compensation awarded by the Tribunal is just and reasonable. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

13.Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The Appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the award amount with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

5. In view of the Judgment pronounced by this Court in respect of the similar facts, this Court does not intend to take a different view in this matter.

6. In the result,

(a) this appeal is dismissed and the Judgment and Decree dated 17.12.2004 made in M.C.O.P.No. 1206 of 1994, on the file of Motor Vehicles Accidents Claims Tribunal, I Additional District Court, Dharmapuri at Krishnagiri is hereby confirmed.

(b) the appellant/Insurance company is directed to deposit amount as awarded by the Tribunal, with interest at the rate of 7.5%, less the amount already deposited, if any, within a period of 8 weeks from the date of receipt of copy of this Judgment.

(c) On such deposit, the petitioner/ claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(e) There will be no order as to costs.

(f) Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To.

1.The Motor Accident Claims,
Tribunal, I Additional District Court,
Dharmapuri at Krishnagiri.

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

+1cc to Mr.G.Munirathnan, Advocate, S.R.No. 13713

C.M.A. No.2820 of 2010 and

M.P.No.1 of 2010

SKV (CO)
GN (31/05/2019)