

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.505 of 2009 and
M.P.No.1 of 2009

M/s. The New India Assurance Company Ltd
No.87 Mahatma Gandhi Road
Fort
Mumbai - 23

...Appellant/2nd Respondent

Vs

1.Chellappan ...1st Respondent/Petitioner

2.Pattukottai Azhagiri Transport Corporation Ltd
Rep by its Managing Director
now known as
Tamil Nadu State Transport Corporation Ltd
Villupuram, Division II
Sathuvachari
Vellore

3. Pushparani

4. K.Sivakumar

5. K.Jayakumar

6. K.Satheesh Kumar

7. K.Usha

8. K.Dharani

...Respondents 2 to 8 /Petitioner
Respondents 3 to 9

Prayer:Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 29.03.2006 made in MCOP No.6 of 2002 on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Court, Fast Track Court No.2, Ranipet.

For Appellant : Mr.N.Vijaya Raghavan

For Respondent : Mr. A.Gowthaman - for R1

: R2-given up

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award passed by the Tribunal in MCOP No. 6 of 2002.

2. It is the case of the claimant / 1st respondent herein that on 14.04.1989, at about 5.15 pm, the driver of a bus bearing Reg.No.K TCB 3407 and a lorry bearing Reg No.MSQ 7502 drove their vehicles on the bypass Road, Visharam, in a rash and negligent manner, without following traffic rules, dashed against each other and caused the accident. Due to the accident, the claimant sustained grievous injuries all over the body. Stating that the accident had happened due to the rash and negligent driving of both the drivers of bus and lorry, the claimant filed a claim petition before the Tribunal, claiming a compensation of Rs.70,000/- After an elaborate trial, the Tribunal has awarded a sum of Rs. 25,000/-.

3. Challenging the said award, the appellant /Insurance Company has come forward with this present Civil Miscellaneous appeal.

4. Heard the learned counsel for the appellant and the first respondent.

5. The learned counsel for the appellant submitted that the Tribunal has erred in fastening the liability on the insurer in a case, where the claimant was an occupant in a goods vehicle carrying 80 persons. He further submitted that the award of interest at 9% per annum is contrary to 2005 (3) Supreme 262.

6. Per contra, the learned counsel for the 1st respondent/claimant submitted that based on the evidence and documents, the Tribunal has fixed the liability on the drivers of both the vehicles and awarded only a meagre amount, which does not require any interference by this Court.

7. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

8. On a perusal of the award passed by the Tribunal, it is to be noted that before the Tribunal, the claimant / 1st respondent herein was examined as PW.1. Besides, Exs.P.1 and 2 were marked. On the side of the respondents, the driver of the bus, the Official of the Insurance Company of the lorry and the legal heir of the driver of the lorry were examined as Rws.1 to 3 respectively.

9. Now, it is necessary to discuss the evidence one by one for better appreciation. Before the Tribunal, the claimant (PW.1) as a eyewitness to the accident, has deposed that the accident had happened due to the rash and negligent driving of both drivers of the lorry and the bus. RW1, the driver of the bus has deposed that the lorry driver drove the lorry in a rash negligent manner and dashed against the bus. Further, complaint has been lodged against the lorry driver only and a criminal case also registered against him. Hence, the driver of the bus and and insurer of the bus are not liable to pay the compensation. RW2, the Insurer of the lorry deposed that though the lorry has been insured with them, they are not liable to pay the compensation, since the claimant along with others travelled in the said lorry as un-authorised passengers, by violating the policy conditions. Finally, on going through the evidence of RW3, (the legal heir of the lorry driver), he has stated that due to the rash and negligent driving of the bus driver only, the accident had happened. Hence, neither the driver, nor the insurer of the lorry are not liable to pay the compensation.

10. On combined reading of the above evidence and documents placed before the Tribunal, it has come to the conclusion that both the drivers of lorry and bus are responsible for the accident based on the following parameters.

- i. The claimant is an eyewitness to the accident and as against the contention of the claimant, no documentary proof has been produced by the respondents.
- ii. The Subordinate Court has decided in connected MCOPs arose out of the same accident, that both drivers of the lorry and bus are equally contributed their negligence for the said accident

Hence, the findings arrived at by the Tribunal regarding the negligence aspect needs no interference by this Court.

11. As far as the quantum of compensation awarded by the Tribunal is concerned, the Tribunal has taken Ex.P.1, Wound Certificate and Ex.P.2 Medical Report, wherein it was mentioned that the claimant sustained only simple injuries. Besides, no other medical records have been submitted in order to substantiate that the claimant took further treatment for his injuries. In the absence of any substantial medical proof, the Tribunal has fixed Rs.5,000/-towards Transport expenses, Rs.5,000/- towards extra nourishment and Rs.5,000/- towards medical expenses, Rs.5,000/-towards loss of income, Rs.5,000/-towards loss of future earnings totalling to Rs.25,000/-. With regard to the rate of interest, it is to be noted that the date of accident was 1989 and the present appeal being disposed of in the year 2019. Hence, at the time of passing an award by the Tribunal during 2002, the rate of interest adhered in all MCOPs

was 9% only. Hence, this Court is of the opinion that the compensation awarded by the Tribunal and the rate of interest at 9% are reasonable, and therefore, there is no ground to interfere with the judgment passed by the Tribunal.

12. In such view of the matter, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The appellant / Insurance Company and the 2nd respondent herein are directed to deposit the award amount along with interest and costs, as ordered by the Tribunal, 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 is directed to transfer the deposited amount, to the Savings Bank Account of the claimant/ 1st Respondent herein, through RTGS, within one week thereafter.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vrn
To

1. The Motor Accident Claims Tribunal/
Additional District and Sessions Court, Fast Track Court No.2
Ranipet
2. Pattukottai Azhagiri Transport Corporation Ltd
Rep by its Managing Director
now known as
Tamil Nadu State Transport Corporation Ltd
Villupuram, Division II
Sathuvachari
Vellore
3. The Section Officer
V.R. Section
Madras High Court
Chennai 104

+1 CC to Mr.N.Vijaya Raghavan, Advocate sr 63964
+1 CC to Mr.A. Gowthaman, Advocate sr 64041.

C.M.A.No.505 of 2009 and
M.P.No.1 of 2009

NR(CO)
SP(01/12/2020)