

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.12.2019
CORAM

THE HONOURABLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.882 of 2010
& MP.No.1 of 2010

Branch Manager,
The United India Insurance Co. Ltd.,
Ranipet.

... Appellant

1.Thiru.V.Srinivasan
2.Thiru R.Arumugam

Vs

... Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 17.08.2009 made in MCOP No.144 of 2003 on the file of Motor Accidents Claims Tribunal (MACT), Subordinate Judge of Cheyyar, at Thiruvannamalai District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.M.Rajendran for R1

JUDGMENT

This appeal has been preferred by the Insurance Company, who is the appellant herein against the judgment and decree dated 17.08.2009 made in MCOP No.144 of 2003 on the file of Motor Accidents Claims Tribunal (MACT), Subordinate Judge of Cheyyar, at Thiruvannamalai District, by raising various grounds.

2. The main contention of the appellant is that the accident was caused solely due to the rash and the negligent act of the driver of the vehicle and that the vehicle being a goods carriage, which is neither instructed nor adopted to carry passengers, who have self-travelled in the said vehicle against the registration certificate permitting the Insurance Company and they are not entitled to get any compensation. It is contended that while only three persons were entitled to travel in the said vehicle, five persons had travelled in the said vehicle and due to rash and negligent act in applying the break, the vehicle overturned and for this, no liability can be fastened on the Insurance Company, but only the owner of the vehicle is liable to pay the award amount and that the impugned award is very high, and prayed for setting aside the order

passed by the Tribunal.

3. The case in brief, is as follows:

On fateful day, ie. on 26.09.2002, at about 4 pm, the claimant V.Srinivasan along with other persons, travelled in a Mini Lorry bearing Registration no.TN51-X4398 proceeding from Vandavasi to Chennai -Trichy direction, the driver of the said Mini Lorry, who drove the vehicle in a rash and negligent manner had applied sudden break due to which, the lorry overturned, as a result of which, the claimant and others sustained injury and were admitted in Government Hospital at Ulundurpet. The first respondent /claimant was recommended to Pondichery, Zipmer Hospital, the injuries sustained are grievous and the Doctor has also certified that the injuries are grievous and issued Disability Certificate stating that the injured sustained 38% permanent disability and filed claim petition seeking a sum of Rs.3,00,000/- as compensation.

4. A counter affidavit has been filed inter alia denying the claim of the claimant, stating that the driver of the vehicle had not possessed a valid licence and the age of the claimant has to be proved. It is further stated that the accident had occurred only due to rash and negligent act of the driver of the vehicle and in order to claim compensation, the driver of the vehicle created false documents and that the vehicle being a goods vehicle, the appellant is not liable to pay any compensation.

5. The claimant examined himself as PW1 and two more witnesses were examined on behalf of him. Exs.P1 to P10 were marked. On behalf of the respondents, one witness i.e., the Officer of the appellant Insurance Company has been examined as RW.1. On evaluation of the evidence, the Tribunal had come to conclusion that the second respondent/appellant herein is liable to pay compensation to the claimant and awarded a sum of Rs.1,10,000/- as compensation. As against the said award of the Tribunal, the appellant Insurance Company has come forward by way of preferring this Civil Miscellaneous Appeal.

6. On perusal of the award passed by the Tribunal, it is found that the said V.Srinivasan/first respondent herein who was one of the passengers travelled in the said vehicle, sustained injuries due to the rash and negligent act of the driver of the vehicle who applied sudden breaks. It is contended on behalf of the appellant/Insurance company that only three persons could be travelled in the vehicle, whereas, five other persons had travelled, which is beyond the permitted capacity and also did not permit them to carry more passengers in the goods carrying vehicle and therefore, no liability can be fastened on the appellant/Insurance company.

7. It is seen that the said Srinivasan/first respondent was a co-passenger travelled in the vehicle which was also evident from the First Information Report. The said contention of the appellant that no liability could be fastened was rejected and it is held by the Tribunal that the claimant was entitled for compensation. A perusal of the Disability Certificate(Ex.A9) issued by Dr.Balakrishnan, PW2, it is seen that permanent disability of the deceased was assessed at 38%. A perusal of X-Ray, which was marked as Ex.A10, it is found that the injured sustained fracture only in one place at thigh bone. Hence, no other evidence has been produced by the claimant that he sustained grievous injuries apart from the fracture and had taken conservative method of treatment at Puthur. Hence, it is found that the disability fixed by PW2, Doctor is on the higher side without any medical records, this Court is inclined to reduce the same as 20%. Accordingly, the compensation for 20% disability is fixed at Rs.40,000/- (Rs.2000/- per disability) instead of Rs.76,000/- awarded by the Tribunal. Likewise, as regards the other head, i.e. pain and suffering, this Court has not reduced the amount from Rs.20,000/- and the same is confirmed and the amount awarded by the Tribunal under the heads of Transport, loss of income and nourishment, this Court is inclined to confirm the same. Hence, after reducing the compensation under the heads of disability and loss of income and nourishment, the award amount as detailed below, is hereby confirmed.

Loss of Income ..	Rs.9,000/- (confirmed)
Transport ..	Rs.4,000/- (confirmed)
Extra nourishment ..	Rs.1,000/- (confirmed)
Permanent disability..	Rs.40,000/- (Reduced from 76,000)
Pain and suffering ..	Rs.20,000/- (confirmed)
Total ..	Rs.74,000/-(amount modified from Rs.1,10,000/-)

8. Accordingly, the above heads are modified and the Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

9. The learned counsel for the appellant would submit that they have already deposited the entire award amount which has been awarded by the Tribunal, hence, this Court is of the view that from the above deposit, excess amount has to be refunded to the appellant/Insurance Company and accordingly, the Tribunal is directed to refund the excess amount to the appellant/Insurance Company, who would file a formal petition for refund.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Motor Accidents Claims Tribunal (MACT)/
Subordinate Judge, Cheyyar, at Thiruvannamalai District.
- 2.The Section Officer,
VR Section, Madras High Court.

+1 cc to Mr.T.Chandran Advocate sr101750
+1 cc to Mr.M.Rajendiran Advocate sr101716

C.M.A.No.882 of 2010

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