

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

THE HONOURABLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.956 of 2010
& MP.No.1 of 2010

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

... Appellant

1.Thiru.M.Mani @ Subramani
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.148 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 is preferred by the Insurance Company, who is the appellant herein against the judgment and decree dated 17.08.2009 made in MCOP No.148 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 Mr.Mani @ Subramani along with other persons, who were transporting goods and proceeding in Mini Lorry bearing Registration no.TN51-X4398 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 claimants 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 41% permanent disability.

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 said claimant/1st respondent 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.1,16,000/- 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 Mani @ Subramani / first respondent herein who worked as Cleaner of 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 Mani@Subramani/first respondent was working as Cleaner 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 41%. A perusal of X-Ray, which was marked as Ex.A10, it is found that the injured sustained only fracture in one place. No details of injury stated in the claim petition. No other evidence has been produced by the claimant that he sustained injury in his knee as well as lower leg. Only conservative method of treatment at Puthur was taken. Hence, it is found that the disability fixed by PW2, the 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.82,000/- awarded by the Tribunal. Likewise, as regards the other head, i.e. pain and suffering, this Court has reduced the amount from Rs.20,000/- awarded by the Tribunal to Rs.16,000/- 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 82,000)
Pain and suffering	..	Rs.16,000/- (Reduced from 20,000)
Total	..	Rs.70,000/-

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

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

dn

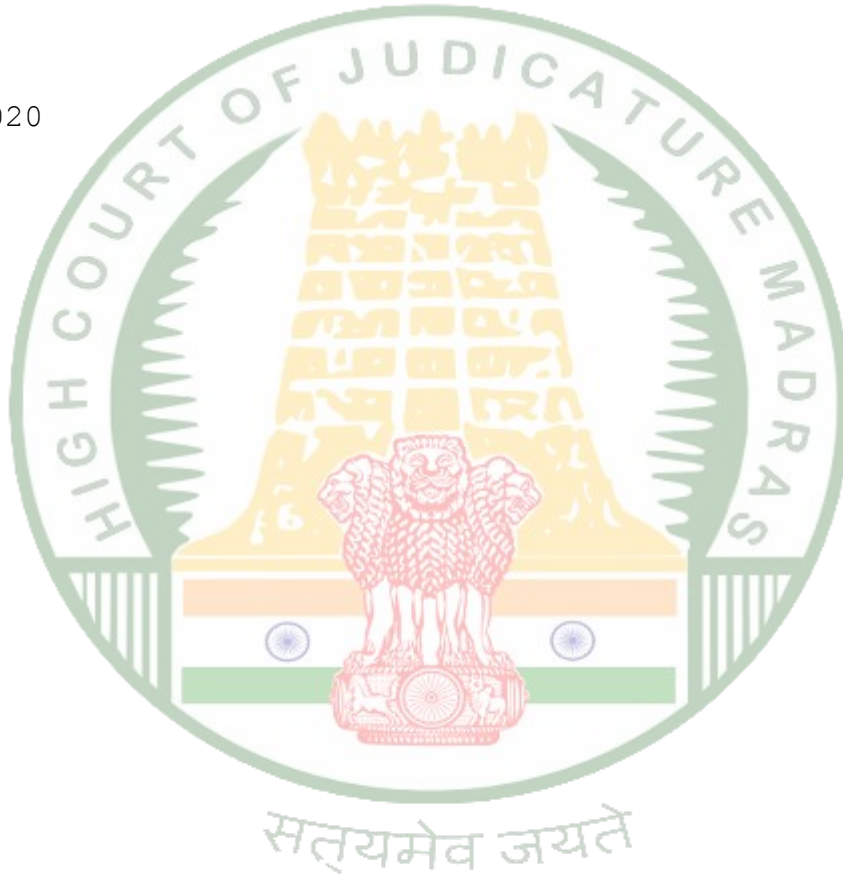
To

- 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.956 of 2010

aa03/11/2020



WEB COPY