

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 13.03.2019

Judgment Pronounced on : 03.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3533 of 2011

and

MP.No.1 of 2013

The Branch Manager,
The Oriental Insurance Co.,Ltd.,
21, Mission Road, Near Subbiah Circle,
Bangalore - 560 004. Appellant/2nd respondent

Versus

1.Timmarayan ...1st Respondent/Claimant
2.Kasinathan ... Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.11.2010 passed in MACTOP.No.1821 of 2006 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.Mukund R.Pandiyan (for R1)
: No Appearance - R2

JUDGMENT

Challenging the award passed by the Tribunal, the Insurance Company has filed this appeal, on the point of liability and quantum.

2.The first respondent herein is the claimant, who preferred the claim petition alleging that on 19.10.2003, at about 1.30 pm., near Melapatti Sutta Parai and near Dharmaraja Nagar, after unloading the waste mud, when the claimant was locking the door of the Tractor-Trailer bearing Registration No.TN-29-R-7734, the driver of the same, suddenly started the Tractor and moved it rashly and negligently in a reverse manner, as a result of which, the claimant fell down and the left side wheel of the Trailer and the left side rear wheel of the Tractor ran over the body and stomach of the claimant. As a result of the same, the claimant sustained severe injuries and he was immediately admitted to T.C.R Hospital, Krishnagiri as an in-patient from 19.10.2003 to 30.10.2003. Thereafter, he took further treatment at Government Hospital, Krishnagiri, where he took

two days treatment on 31.10.2003 and 01.11.2003. Thereafter, he was admitted to Government Mohan Kumaramangalam Medical College Hospital, Salem as an in-patient on 02.11.2003 for the injuries sustained in the said accident. During this period, the claimant incurred a sum of Rs.60,000/- for medical expenses, but still he has not recovered. Therefore, the claimant/first respondent herein filed claim petition in MACTOP.1821 of 2006, claiming a sum of Rs.11,64,400/- as compensation, which was restricted to Rs.6,00,000/-.

3.The second respondent in the claim petition is the appellant/Insurance company. They raised the plea that the claimant is not entitled to any compensation, in as much as he has travelled as an unauthorized passenger and as per the terms of policy, only one driver is permitted to travel in the Tractor-Trailer. Hence, the Insurance company is not liable to pay compensation to the claimant.

4.In support of the claim petition, before the Tribunal, the claimant was examined as PW.1, besides examining one Dr.K.A.Kandasamy as PW.2 and documents Exs.P1 to 12 were marked. On the respondent's side, one Kandasamy was examined as RW.1 and Exs.R1 to R3 documents were marked.

5.Based on the oral evidence of PW.1 coupled with the documentary evidence Ex.P1/FIR, the Tribunal has rightly come to the conclusion that the accident occurred was due to rash and negligent driving of the driver of the Tractor-Trailer bearing Registration No.TN-29-R-7734. In the absence of contra evidence, the same is hereby confirmed.

6.The next point raised for consideration is as to whether the injured travelled in the Tractor-Trailer as projected by the Insurance company or he was standing outside of the Tractor unloading the waste mud as claimed in the claim petition.

7.The learned counsel appearing for the appellant/Insurance company would contend that the first respondent herein/claimant is not entitled to any compensation, since he travelled in the Tractor-Trailer as unauthorized passenger and in the said Tractor, the driver alone was permitted to be seated as it is having only one seating capacity and hence, he could not allow any other person to travel in the said Tractor. Hence, the Insurance company is not liable to pay any compensation and on this score reliance was placed on the evidence of RW.1/Deputy Manager of Insurance company. Of course, during the cross examination, he deposed that he is not an occurrence witness and furthermore, no Investigation Report was filed.

8.It is the specific case of the claimant, both in the claim petition as well as in the affidavit before the Court that he was an unloading coolie. The said factum is not rebutted by producing any contra evidence. In view of the clear evidence of PW.1 coupled with Ex.P1/FIR, this Court

finds that the claimant was unloading the waste mud into the Trailer and while he trying to lock the back door, the driver without noticing the back side, reversed the vehicle rashly and as a result PW.1, who was standing after unloading the waste mud, sustained injuries.

9. Taking into consideration, the fact that at the time of accident, he was standing outside of the Tractor after completing his unloading work, the Tribunal has rightly held that as per the policy's terms and condition of Ex.R3/Policy copy, the Insurance company and the owner of the vehicle are jointly and severally liable to pay compensation to the claimant and the same does not warrant interference. Accordingly, the point raised by the Insurance company, is answered against the appellants.

10. After going through the evidence of the Doctor/PW.2 and Ex.P2/AR copy, Ex.P3/discharge summary at the first instance, Ex.P5/discharge summary at the second instance and Ex.P10/discharge summary at the third instance, it appears that the claimant has taken his initial treatment at T.C.R Hospital, Krishangiri as an in-patient from 19.10.2003 to 30.10.2003 and then at Government Hospital, Krishnagiri, from 31.10.2003 to 01.11.2003. Thereafter, he took treatment at Government Mohan Kumaramangalam Medical College Hospital, Salem as an in-patient on 02.11.2003 for the injuries sustained in the said accident.

11. PW.2, the Doctor, who examined the claimant, deposed that due to the said accident, his right kidney is not functioning and due to his bone fracture in lower lumbar region of back, he is getting stomach pain and digestion power reduced. He is unable to sit, stand, walk and squat as before and he is unable to live life as before and thus assessed his disability at 80% and the same is marked as Ex.P11/disability certificate as per Ex.P8/Scan report, the claimant sustained tenderness of abdomen, passing blood with urine, right kidney was not functioning. Tenderness over the lower lumbar region of back and difficulty in breathing and he would have suffered lot due to his pain and suffering.

12. Thus, this Court finds that, as per the three discharge summaries, his kidney was affected and gal bladder was also affected and his regular function is affected and he could not perform his regular work as before the accident. This Court is of the opinion that the claimant's disability is functional disability and the criteria laid down for adoption of multiplier method, as per the decision rendered by the Honourable Supreme Court in the case of Rajkumar Vs. Ajaykumar & another, reported in 2010 (2) TN MAC 581 SC is satisfied in this case. and there is no infirmity in adopting multiplier method. Therefore, the same is hereby confirmed.

13. The amounts awarded under various heads by the Tribunal are not excessive. The plea of the Insurance Company that the award of compensation is exorbitant is rejected.

Hence, the appeal filed by the Insurance company is liable to be dismissed and is accordingly, dismissed.

14. In the result,

(i) the appeal filed by the Insurance Company is dismissed by confirming the award dated 18.11.2010 in MACTOP.No.1821 of 2006 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Krishnagiri.

(ii) the appellant/Insurance Company is directed to deposit the award amount as determined before the Tribunal, along with costs and interest at the rate of 7.5% per annum, within a period of eight weeks from the date of receipt of a copy of the Judgment.

(iii) On such deposit being made, it is open to the claimant/first respondent herein to withdraw the entire award amount by making necessary application before the Tribunal.

(iv) There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Accident Claims Tribunal
(Chief Judicial Magistrate), Krishnagiri.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.M.Krishnamoorthy , Advocate SR.No. 55587

+1cc to Mr.Mukund R.Pandiyar , Advocate SR.No. 55702

C.M.A.No.3533 of 2011

and

MP.No.1 of 2013

A.SK(14/10/2019)

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