

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKA RAMAN

CMA.No.471 of 2011

and

MP.No.1 of 2011

United India Insurance Co.Ltd.,
Branch Manager,
Thiruchengodu Branch,
146-N, Kumar Complex,
Thiruchengodu, Tiruchengodu Taluk,
Namakkal District. Appellant/3rd Respondent

Versus

1. Superintending Engineer,
TNEB, Electricity Distribution Circle,
Gobi (Bhavani Division)
Gobi Taluk, Erode District. 1st Respondent/Petitioner
2. C.Gunasekaran ... 2nd Respondent/1st Respondent
3. The Correspondent,
KSR Matric Higher Secondary School,
Thokkavadi Post, Tiruchengodu Taluk,
Namakkal District. 3rd Respondent/2nd Respondent

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 04.11.2009 passed in MCOP.No.338 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, (FTC-4), Bhavani at Erode District.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.V.Viswanathan (for R1)
: Mr.P.Vasanth (for R2)
: No Appearance (for R3)

J U D G M E N T

The United India Insurance Company limited is the appellant herein. The appellant has filed this appeal challenging the award dated 04.11.2009 passed in MCOP.No.338 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, (FTC-4), Bhavani at Erode District in so far as it relates to fastening liability on them.

2.The brief facts, which are necessary to decide the issue involved in this appeal, are as follows:-

On 31.10.2007 at about 6.00 pm, the bus bearing No.TN-34-F-4587 belonging to the second respondent was driven by its driver in a rash and negligent manner i.e., first respondent from Bhavani to Appakudal road. At that time, one Valliammal, who was standing on left side of the Servarayan Palayam road near Vallidathu Amman Koil and she was hit by the bus, with the result, she sustained fatal injuries. After hitting the said Valliammal, the first respondent drove the bus again in a reckless and brutal manner and dashed against a transformer on the right side of the Servarayan Palayam road. In the impact, the said transformer (S.R.Palayam SS III, 100KVA+63KVA) belongs to the TNEB department, Bhavani, was completely damaged. According to the claimant, the first respondent alone was the cause for the accident which had occurred due to his negligent and rash driving, as a result of which, the said transformer was completely damaged with structure. Therefore, the TNEB department filed the claim petition in MCOP.No.338 of 2008, claiming a sum of Rs.5,32,600/- towards material cost and labour charges before the Tribunal as compensation.

3.The claim was resisted by the Insurance company contending that the accident had occurred only due to the negligent act of the driver of the second respondent's vehicle. The driver himself is responsible and no other person or vehicle involved in the accident. Hence, the Insurance Company is not liable to pay compensation.

4.Before the Tribunal, on the side of the claimant, one Desingurajan was examined himself as P.W.1, one eye witness Srinivasan was examined as PW.2 and six documents were marked as Ex.P1 to Ex.P6. On the side of the Insurance Company, one NandhaKumar, officer of the insurance company was examined as R.W.1 and one S.Subramaniam, Surveyor & Assessor of the insurance company was examined as RW.2 and three documents were marked as Ex.R1 to R3. Ex.R1 is the policy copy, Ex.R2 is the approval letter and Ex.R3 is the value of depreciation report issued by the RW.2.

5.The Tribunal, after analysing the oral and documentary evidence adduced on either side, has come to the conclusion that as the claim was made by the claimant under Section 166 of the Motor Vehicles Act, on evidence claimant prove the negligence and by coming to such a conclusion, the Tribunal fixed the liability on the part of the Insurance Company. Upon appreciation of the evidence made available, the Tribunal has awarded a total sum of Rs.5,32,600/- as compensation under structural formula. Questioning the same, the present appeal has been filed by the Insurance Company.

6.The learned counsel for the appellant/Insurance Company submitted that the driver of the offending vehicle did not possess any valid license at the time of accident. It is a clear violation under the Motor Vehicles Act. The Tribunal, without considering the above has awarded a huge sum of Rs.5,32,600/- as compensation towards the damage of old transformer. Aggrieved the same, the present appeal is filed.

7.It is the main submission of the learned counsel for the appellant/Insurance Company that PW.2/eye witness had lodged a complaint under Ex.P1/FIR before the Police, in which it has been stated that while the School bus was proceeding to Servarayan Palayam road near Valldathu Amman Koil, a women suddenly darted across the said road. However, the driver of the bus did not notice it and hit the lady and again dashed the transformer erected in the above said road. The learned counsel for the appellant/Insurance Company would further contend that the first respondent/TNEB is also responsible for the accident, because without taking note of the topography of the road, they have installed the transformer in the said road, without proper fencing and barricading. Further, the transformer was erected in the year 1975, it was very old and it is necessary to reduce the depreciation apart from salvage. In spite of the report issued by RW.2 and an assessment made by the Assessor RW.3/Surveyor, the Tribunal has erroneously fixed the liability on the part of the Insurance Company to pay compensation to the TNEB department. Thus, the learned counsel for the appellant/Insurance Company sought for setting aside the findings rendered by the Tribunal and consequently, to exonerate the Insurance Company from paying the compensation amount.

8.Keeping the submissions made on either side, I have carefully perused the materials available on record.

9.One of the grounds raised by the appellant in ground No.8 in the present appeal is that even according to the first respondent/TNEB arrived net charges/damages incurred by them is only Rs3,54,000/- and even for that amount deducted at the rate of 74.4% has to be given towards depreciation. On going through

the oral and documentary evidence adduced before the Tribunal, it is seen that Ex.P1 is the First information report. Ex.P2 is the rough sketch, Ex.P3 is the observation mahazar and Ex.P4 is the Motor Accident report and Ex.P5 is the Charge sheet. Ex.R2 is the communication between the parties and Ex.R3 is the report relating to valuation of damage. It is evident that the transformer was erected in the year 1975, which was very old one. While deducting the depreciation at the rate of 74.4% without perusing the records to the removed parts of the transformer, the Tribunal awarded the compensation amount as prayed for in the claim petition, which is excessive.

10. On going through the discussion made in the award, I find that the Tribunal has awarded the amounts arbitrarily under the two different heads, which resulted in awarding Rs.5,32,600/- as compensation. Considering the facts and circumstances of the case, I find that a sum of Rs.5,32,600/- lakhs awarded by the Tribunal is liable to be reduced, particularly in the light of evidence under Ex.P6 and Ex.R3, report relating to actual damage caused to the transformer. Consequently, the total award amount is hereby reduced to Rs.3,00,000/- from Rs.5,32,600/- awarded by the Tribunal.

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.5,32,600/- is hereby reduced to Rs.3,00,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent/claimant is permitted to withdraw the modified award amount along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.338 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, (FTC-4), Bhavani at Erode District, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Accidents Claims Tribunal,
Additional District Judge, (FTC-4),
Bhavani at Erode District.
2. The Section Officer,
V.R.Section, High Court,
Madras - 104.

+lcc to Mr.S.Arunkumar, Advocate, S.R.No.21619

CMA.No.471 of 2011

SSV(CO)
CS/26/07/2019



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