

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 22.04.2019	Date of Pronouncing Judgment 31.07.2019
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CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.598 of 2011
and M.P.No.1 of 2011

United India Insurance Co. Ltd.,
Branch Office No.111,
No.137, Cherry Road,
Salem - 1.Appellant

Vs.

1.S.Sathiyarayanan
2.R.LakshmiammalRespondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 04.09.2010 made in M.C.O.P.No.340 of 2007 on the file of the Motor Accidents Claims Tribunal, I Additional Sub Court, Salem.

For Appellant : Mr.S.Arunkumar
For Respondent 2 : Ex-parte
For Respondent 1 : Mr.M.R.Thangavel

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award and decree dated 04.09.2010 made in M.C.O.P.No.340 of 2007 on the file of the Motor Accidents Claims Tribunal, I Additional Sub Court, Salem.

2. The Insurance Company is the appellant herein, challenging the award passed in M.C.O.P.No.340 of 2007 on the ground of the negligence and quantum as well.

3. The brief facts, which are necessary for disposal of this appeal are as follows:

The first respondent herein who sustained accidental injury in the accident taken place on 30.01.2017 filed claim petition alleging that on 30.01.2007 at 7.30 pm., the injured /

claimant was trying to get down from the bus bearing Registration No. TN-31-6566 Route No.5, which was driven by its driver in a rash and negligent manner without following any traffic rules and regulations with great speed and all of a sudden at 7.30 pm., the driver of the bus took the same in Kannankurichi Mariyamankoil Bus Stop, without hearing any signal from the conductor, due to which the injured Sathyanarayan was fell down from the bus and caused the accident. Due to the accident, the injured / claimant was sustained left leg grievous injuries and on the vital parts of the body.

4. Before the Tribunal, the first respondent owner of the vehicle remained exparte and the second respondent before the Tribunal / The Insurance Company filed counter statement alleging that the accident had taken place not due to the rash and negligent driving of the driver of bus bearing Registration No. TN-31-6566 of the first respondent before the Tribunal. But the careless and unwatchful foot board traveling of the claimant and got down from the bus before ever the bus reaches proper bus stop so as to reach very near to his house by the claimant himself and hence, the claimant had met the accident by his own fault.

5. Before the Tribunal, claim petitioner examined himself as P.W.1 and Doctor was examined as P.W.2, Ex.P1 to Ex.P13 were marked. On behalf of the respondent / Insurance Company, they have examined the conductor and driver of the offending vehicle who were on duty on the said date, as R.W.1 and R.W.2 and no documents were marked.

6. On consideration of both oral and documentary evidence, the Tribunal has held that the accident had taken place due to the rash and negligence driving of the driver of the first respondent bus which was insured with the second respondent / Insurance Company and has held that both respondents 1 and 2 are jointly and severally liable to pay compensation and awarded Rs.1,99,353/- as compensation to the claimant and hence, appeal by the Insurance Company.

7. After hearing both the parties, this Court finds that the claim petitioner has specifically stated that the driver of the offending vehicle has not driven the vehicle in the proper manner and not properly negotiated on the speed breaker situated 600 feet before the bus stop and the claim petitioner, who was standing near the foot board, fell down and sustained injuries.

8. Per contra, R.W.1 and R.W.2, who are the conductor and bus driver of the first respondent bus on that day could depose

that the claim petitioner got down from the bus 600 feet before the bus stop, so as to go to his house which is situated nearby despite warning given by the conductor and driver. After perusal of the Ex.P1 FIR and also taking note of the evidence of P.W.1, this Court finds that the version of R.W.1 and R.W.2 is self serving and to rebut the evidence of P.W.1 they are not marked the rough sketch, so as to demonstrate the alleged speed breaker, before the 600 feet. It is the specific case of P.W.1 that near the speed breaker the driver of the bus has driven the vehicle in a rash and negligent manner resulting heavy speed in the bus whereby the claim petitioner, who was standing near the entrance of the foot board, fell down.

9. Taking note of the position of the claim petitioner at the time of the travel, this Court finds that the accident had taken place due to the rash and negligent driving on the part of the driver as the version of R.W.1 and R.W.2 are found to be self serving statement and no independent witnesses were examined by the owner or by the Insurance Company or any passengers, who have travelled in the said bus on the said date. In this view of the matter, the version of P.W.1 is found to be more probable as the evidence of the P.W.1 coupled with the documentary evidence of Ex.P1, this Court finds that the accident had taken place due to the rash and negligent driving on the part of the driver of the first respondent vehicle and not on the part of the claimant, as projected by the Insurance Company and hence, the finding arrived by the Tribunal on different reasoning is hereby confirmed and this point is answered in negative against the appellant / Insurance Company.

10. On the point of quantum, after going through the evidence on record and after taking note of the fact that for the injuries sustained, P.W.1 has taken treatment in two different hospital in two spells for the period of 15 + 24 = 39 days as an inpatient and the compensation awarded by the Tribunal towards the loss of income during the period of treatment appears to be reasonable and hence, in this view of the matter, the quantum of compensation awarded by the Tribunal appears to be fair and reasonable.

11. In the result,

(i) The Civil Miscellaneous Appeal is dismissed and the Judgment and Decree dated 04.09.2010 passed by the learned Motor Accidents Claims Tribunal, I Additional Sub Judge, Salem, in M.C.O.P.No.340 of 2007, is confirmed.

(ii) If the award amount with accrued interest has not been deposited, the appellant / Insurance Company is directed to deposit the entire award amount with accrued interest at the rate of 7.5% per annum from the date of claim petition with

costs, to the credit of M.C.O.P.No.340 of 2007 on the file of the Motor Accidents Claims Tribunal, (I Additional Sub Court), Salem, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn, if any.

(iv) Consequently, the connected Miscellaneous Petition is closed.

(v) There shall be no order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
First Additional Sub Court,
Salem.

+1cc to Mr.S.Arunkumar, Advocate Sr.65624

+1cc to Mr.M.R.Thangavel, Advocate Sr.65789

C.M.A.No.598 of 2011
and M.P.No.1 of 2011

rs[co]
srg 09/06/2020

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