

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3460 of 2012
and M.P.No.1 of 2012

The National Insurance Company Limited,
Divisional Office II,
Sri ranga Comple, II Floor,
104-A, Petnabut Main Road,
Salem.

...Appellant/2nd Respondent

..vs..

1.N.Kaliappan
2.T.N.Ramesh

...Respondents/ Petitioner /1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 15.02.2012 in M.C.O.P.No.639 of 2010 on the file of the Motor Accident Claims Tribunal, (Fast Track Court-I), Salem.

For Appellant : Mr.G.Udaya Sankar
For 1st Respondent : Mr.A.Nagarathinam

JUDGMENT

The appellant is the National Insurance Company Limited, Salem. The second respondent in M.C.O.P.No. 639 of 2010 on the file of the Fast Tract Court-I, Motor Accidents Claims Tribunal, Salem, has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988, questioning their liability to pay compensation to the first respondent/claimant.

2. The brief case of the first respondent/claimant is as follows:

On 24.07.2008, the claimant was travelling as a passenger in a bus bearing Registration No.TN 30 C 0436 belonging to the second respondent on Thiruvakavundanur Bybass. The driver of the bus drove the vehicle rashly and negligently, as a result of which, the first respondent/claimant fell down from the bus and sustained injuries all over his body. According to the first respondent/claimant, he was aged 56 years on the date of the accident and that he was a daily labourer and earning a sum of Rs.6,000/- pm. It is further contended by him

that the rash and negligent driving of the driver of the second respondent, was the cause of the accident and that since the second respondent had insured his vehicle with the present appellant National Insurance Company Limited, Salem, both of them are jointly and severally liable to pay compensation of Rs.2,00,000/- to him. The second respondent/owner of the bus remained absent before the tribunal and therefore, he was set ex-parte. The present appellant contested the claim petition.

3.The learned Judge, Fast Tract Court, Salem, after analysing the evidence on record, awarded a compensation of Rs.80,700/- for the injuries sustained by the first respondent/claimant. However, the tribunal deducted 25% towards contributory negligence as it was found from the records that the first respondent/claimant was under the influence of alcohol, at the time of the accident. Thus, the total compensation awarded to the claimant by the tribunal was Rs.60,525/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

4.Mr.G.Udaya Sankar, learned counsel appearing for the appellant contended that neither the driver nor the conductor of the bus was responsible for the accident and that the injured under the influence of alcohol alighted from a moving bus after picking up a quarrel with the conductor and that the driver on seeing the injured getting down from the bus applied brakes and however, the injured fell down and sustained injuries. He would therefore contend that since the accident was only due to the negligence on the part of the injured, the tribunal was wrong in fixing the negligence at 75% on the driver of the bus.

5.He also relied on the final report (Ex.X1) filed by the police and contended that the police filed a chargesheet, since the first respondent/claimant was under the influence of alcohol and also invited the accident by alighting from a moving bus. A perusal of a copy of the Accident Register (Ex.P2) shows that the first respondent/claimant was under the influence of alcohol at the time of the accident and the Sub-Inspector of Police, Salem city, after completing the investigation, has filed the referred charge sheet EX.X1, in which it is clearly stated that the first respondent/claimant was intoxicated at the time of accident. However, when the first respondent/claimant attempted to alight the bus, the driver of the bus or the conductor should have helped the first respondent/claimant from alighting the bus safely and in the instant case, they did not do so. Therefore, the driver and the conductor of the bus had failed in their duty and therefore, the tribunal was right in fixing negligence in the ratio 75:25. At the observations made by the tribunal in this regard are perfectly in order and

therefore, they do not warrant any interference by this Court.

6.As regards the quantum of compensation, no arguments was advanced by the learned counsel for the appellant as well as learned counsel for the respondent. No appeal or cross objections were filed by the first respondent/claimant, the tribunal has considered the various aspects before awarding a sum of Rs.60,525/-. Which is the considered opinion of this Court is a just compensation.

7.In the result,

(i) This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(ii) The appellant Insurance Company is directed to deposit the compensation amount (less the amount already deposited by them) together with interest at the rate of 7.5% per annum on Rs.60,525/- from the date of claim petition to the credit of M.C.O.P.No.639 of 2010 within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant is at liberty to withdraw the same after following due procedure of law.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

vkrr/bga

To

Motor Accident Claims Tribunal ,
Fast Track Court I,
Salem District.

+1cc to Mr.G.Udaya Sankar , Advocate SR.No. 353

+1cc to Mr.A.Nagarathinam , Advocate SR.No. 94

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and M.P.No.1 of 2012

A.SK(01/05/2019)

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