

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.01.2019

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.584 of 2019

United India Insurance Co.Ltd.,
Sankagiri,
Salem District

...Appellant/2nd Respondent

-Vs-

1.M.Chandran

...1st Respondent/Petitioner

2.S.M.Krishnan

...2nd Respondent/1st Respondent

(2nd respondent remained ex-parte before Tribunal)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and decree dated 29.11.2002 made in M.C.O.P.No.410 of 1999, on the file of Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.I, Salem.

For Appellant : Ms.C.Harini

for M/s.M.B.Gopalan Associates

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 29.11.2002 made in M.C.O.P.No.410 of 1999, on the file of Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.I, Salem.

2.The appellant is 2nd respondent in M.C.O.P.No.410 of 1999, on the file of Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.I, Salem. The first respondent filed the above claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.12.1998. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the second respondent and directed the appellant-Insurance Company as well as the second respondent to pay a sum of Rs.1,13,600/- as compensation to the first respondent. Challenging the said

award dated 29.11.2002 made in M.C.O.P.No.410 of 1999 granting compensation to the first respondent/claimant, the appellant-Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant-Insurance Company contended that the deceased was not injured in the accident involving the vehicle belonging to second respondent. The appellant had proved by oral and documentary evidence that the deceased was not a passenger in the bus belonging to second respondent. The Tribunal ought to have accepted the evidence of appellant and dismissed the claim petition. In any event, the amounts awarded by Tribunal is excessive and prayed for setting aside the award of the Tribunal.

4.Heard the learned counsel appearing for the appellant and perused the materials available on record.

5.From the materials on record, it is seen that the first respondent has claimed compensation for the injuries sustained by him in the accident that occurred on 19.12.1998, due to rash and negligent driving by driver of the bus belonging to second respondent. According to first respondent he along with others travelled in the bus belonging to second respondent to go to Sabarimala Temple. At that time, the conductor of the bus asked him to sit near the door. The door did not have proper lock and driver of the bus drove the bus in a rash and negligent manner and without reducing the speed, turned at a curve. At that time, the door opened and he fell down from the bus and sustained injuries. He examined himself as P.W.1 and marked F.I.R and other documents. The appellant examined one D.Ganapathi as R.W.1 and marked list of passengers and copy of the permit as Ex.R1. In Ex.R1, the name of the first respondent was not found. The Tribunal considering the fact that seating capacity of the bus was 57 and only names of 40 persons were mentioned in Ex.R1, held that first respondent would have travelled in the bus and his name would not have been included in Ex.R1. The Tribunal also considered that one Madammal gave a statement on 25.01.1999 that first respondent was thrown out of the bus while returning from Sabarimala Temple. The appellant has not let in any evidence to disprove the evidence of first respondent as P.W.1. The Tribunal considering the nature of avocation of the first respondent, injuries and disability as certified by the Doctor, awarded a total sum of Rs.1,13,600/- as compensation to the first respondent/claimant. The compensation awarded by the Tribunal is just compensation and not excessive. I do not find any error in the award passed by the Tribunal warranting interference by this Court. It is pertinent to note that the grounds raised by the appellant in the appeal do not relate to the facts of present case. While 1st respondent has claimed compensation for the injuries, the appellant has stated that the

Tribunal erred in awarding compensation when the deceased was not injured in the accident involving the bus belonging to 2nd respondent.

6.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.1,13,600/- awarded by the Tribunal as compensation to the first respondent/claimant, along with interest and costs is confirmed. The appellant-Insurance Company as well as the second respondent are directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.410 of 1999. On such deposit, the first respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

gbi/krk

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.I,
Salem.

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

+1cc to Mr.M.B.Gopalan, Advocate, SR.No.7178/19

C.M.A.No.584 of 2019

kak(09/10/2019)
Kak(01/11/2019)

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