



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2741 of 2009

The New India Assurance Co.Ltd.,
11-19-20, Government Arts College Road,
Coimbatore District. ... Appellant/3rd Respondent

Vs.

1. Natchimuthu ...1st Respondent/Claimant
2. Ponnumuthusamy
3. S.K.T.Textile Mills,
380-1A, Chettipalayam Road,
Palladam Taluk,
Coimbatore District. ... Respondents 2&3/Respondents 1&2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 31.03.2009 passed in MCOP.No.729 of 2007 on the file of the Motor Accident Claims Tribunal / Principal Sub-Judge, Tirupur.,

For Appellant : Mr.C.Ramesh Babu
For Respondents : Mr.Ma.P.Thangavel for R1
: No appearance for R2 & R3

JUDGMENT

The New India Assurance Company Limited, Coimbatore, the third respondent in MCOP No.729 of 2007 on the file of the Principal Subordinate Judge/Motor Accident Claims Tribunal, Tirupur has filed the present appeal under Section 173 of the Motor Accident Claims Tribunal.

2. The first respondent/claimant filed the above said claim petition under Section 166 of the Motor Accident Claims Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place

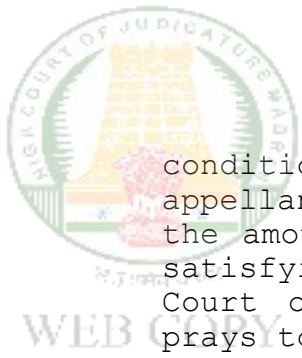


on03.06.2007 .

3. The case of the claimant is that on 03.06.2007 at about 03.00PM, he was travelling in a two wheeler bearing Regn.No.TN41W4385, which was driven at the left extreme of the road. At that time, a van bearing Regn.No.TN39X3379 came in a rash and negligent manner, dashed against the first respondent/claimant and he was thrown away. Due to the said impact, he sustained grievous injuries. According to the claimant, the rash and negligent driving of the driver of the van was the cause of accident and that since the owner of the vehicle (2nd respondent) insured his lorry with the appellant, both of them are jointly and severally liable to pay compensation to him.

4. The learned Subordinate Judge/Motor Accident Claims Tribunal Tirupur, after analysing the evidence on record, awarded a compensation of Rs.1,16,340/- to the claimant together with interest at the rate of 7.5 % per annum. Aggrieved over the orders passed by the Tribunal, the insurance company has filed the present appeal.

5. The learned counsel for the appellant would submit that the Tribunal having found that the driver of the insured Mahindra Van bearing Regn.No.TN39X3379 involved in the accident, causing injuries to the first respondent/claimant was not possessing the requisite endorsement to drive the said van, a goods carriage or a transport vehicle, erroneously fastened the liability on the appellant/Insurance Company. Further, the Tribunal having found that the insurer, the appellant herein is not liable to pay compensation since the said insured van was driven by its driver, without necessary endorsement to drive the said van. The Court below has failed to appreciate the evidence of the officer of the appellant/Insurance Company, who was examined as RW1, who categorically deposed that the driver of the said van was not duly licensed as evident from the motor vehicle Inspector's report, marked as Ex.R-3. The Tribunal failed to see that the said van was driven by the 2nd respondent. The respondents herein had permitted the vehicle to be driven by the driver who does not have a driving license to drive transport vehicles, thereby committing breach of law and the insurance policy covering the said vehicle. The Tribunal having found that the driver of the insured van does not have the requisite endorsement to drive transport vehicle, erroneously gave a finding that the appellant/insurance company has not discharged its burden of proving that the driver of the insured van was not duly licensed. The learned Tribunal ought to have exonerated the appellant/insurance company from liability, since the 3rd respondent herein had permitted the said van to be driven by an unlicensed person, in violation of the terms and



conditions of the insurance policy and erroneously ordered the appellant/insurance company to pay the award and later recover the amount of compensation from the owner of the said van after satisfying the award to the claimant, as held by the Supreme Court of India. Hence, the learned counsel for the appellant prays to allow this appeal.

6. The learned counsel for the first respondent would submit that, since, in the present case, the accident took place only in the year 2007, awarding a sum of Rs.1,16,340/- is very reasonable and hence, there is no need to interfere with the same.

7. Heard the learned counsel for the appellant and the learned counsel appearing for the first respondent and perused the materials available on record.

8. From the evidence of P.W.4, it is assessed that the injured sustained disability as 35% and the Tribunal has reduced the same to 33%. At the time of accident, he was earning a sum of Rs.5,000/-. Without any documents to prove the same, the Tribunal has fixed a sum of Rs.3,000/- as a notional income of the injured and fixed the multiplier at 18 and awarded a sum of Rs.95,040/- ($3000 \times 12 \times 8 \times 33\% = 95,040$) towards "disability", which is just and reasonable and the same is hereby confirmed. The Tribunal has awarded a sum of Rs.10,000/- towards "pain and sufferings" for the injuries sustained by him and the same is hereby confirmed. After considering the medical bills and receipts the Tribunal has awarded a sum of Rs.7,300/- towards "Medical expenses" the same is also hereby confirmed. The Tribunal has awarded a sum of Rs.2,000/- each towards "Nutrition" and "Transportation", which is very meager and the same is hereby enhanced to Rs.5,000/- each. The claimant is also entitled to the following amounts under various heads as extracted hereunder.

Sl. No.	Heads	Amount
1.	Disability	Rs.95,040/-
2.	Pain and suffering	Rs.10,000/-
3.	Nutrition	Rs.5,000/-
4.	Transportation	Rs.5,000/-
5.	Medical Expenses	Rs.7,300/-
	Total	Rs.1,22,340/-

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.



9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is scaled down from Rs.1,16,340/- to Rs.1,22,340/-

(iii) The appellant, Insurance company is directed to deposit the entire compensation awarded by this court i.e., Rs.1,22,340/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first respondent / claimant is at liberty to withdraw the same after following due process of law.

(v) Court fee on the enhanced award amount to be paid by the claimant before the Tribunal.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal
Tirupur.

+1cc to Mr.C. Rameshbabu, Advocate, S.R.No.100949

C.M.A.No.2741 of 2009

VBA (CO)
PM(26/07/2021)