

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1655 of 2006 and
C.M.P. No.7313 of 2006

New India Assurance Company
R.B.Road Extension,
Nanjan Koodu Taluk,
Mysore District

... Appellant

Vs.

1. Madevan

2. Rabeez Ahmed

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 08.02.2002 in M.C.O.P.No.200 of 2001 on the file of Motor Accident Claims Tribunal, Gobichettipalayam (Principal Subordinate Judge).

For Appellant : Ms.A.L.Gandhimathi

For Respondents : Mr.Ma.P.Thangavel for R1
R2 - NA

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed seeking to set aside the Judgment and Decree dated 08.02.2002 in M.C.O.P.No.200 of 2001 passed by the Motor Accident Claims Tribunal, Gobichettipalayam [Principal Subordinate Judge).

2. The case of the 1st respondent / claimant is that on 14.03.2001, he was engaged by the 2nd respondent to unload the goods from his lorry bearing regn. No.K.A.16/271, after unloading the goods, the 1st respondent was getting down from the lorry at about 19.00 hrs at Thalavadi in Tipu Circle, at that time, the 2nd respondent, being the driver cum owner of the lorry, had driven the lorry in a rash and negligent manner with high speed without using horn, due to the sudden movement, the 1st respondent fell down from the lorry and his left hand and his left leg was fractured. Further, with regard to the accident, a case was registered in Crime No.30 of 2001 under Sections 279 and 337 IPC at Thalavadi Police Station. Prior to the accident, the 1st respondent was working as a labourer in the road contract work and earned a sum of Rs.3,000/- per month. After the accident he is suffering from permanent disability, hence the 1st respondent by claiming a sum of Rs.5,00,000/- against the appellant and

the 2nd respondent [who is the insurer of the vehicle and driver cum owner the vehicle] has approached the Tribunal.

3. The appellant / Insurance company by way of a counter denied all the averments stated by the 1st respondent / claimant. Further, the driver cum owner of the vehicle / 2nd respondent, does not have any valid license to drive the vehicle, which was involved in the accident and vehicle does not have valid registration certificate, fitness certificate, permit and insurance policy at the time of alleged accident, thereby sought to dismiss the claim petition.

4. The Tribunal after considering the pleadings, counter pleadings, witnesses and documents, has awarded a sum of Rs.2,49,620/-, as compensation to the 1st respondent. Aggrieved against the same, the Insurance Company has preferred this Appeal.

5. The learned counsel for the appellant submitted that the Tribunal erred in granting an award of Rs.2,49,620/- and the same is highly excessive. Further, the Tribunal had erred in finding 55% disability, which is improper and also erred in fixing the liability on the insurance company.

When the vehicle involved is only meant for transporting goods, the 1st respondent had travelled in the said vehicle, thereby he has violated the policy conditions. That apart, when there is no clear cut proof or evidence for the income of the 1st respondent, the finding of the Tribunal that he earned a sum of Rs.2,100/- per month is only on assumptions. Therefore, seeks to set aside the award passed by the Tribunal.

6. The learned counsel for the 1st respondent submitted that the Tribunal had considered the entire materials available on records and granted compensation, which is just and reasonable and hence seeks to dismiss the present appeal filed by the appellant.

7. Though notice to the 2nd respondent was effected through Paper Publication, there is no representation for him either in person or through learned counsel.

8. Heard the learned counsel on either side and perused the documents placed on record.

9. Before the Tribunal, the 1st respondent / claimant was examined himself as P.W.1 and Doctor was examined as P.W.2 and marked

documents Exs.P.1 to P.11. On behalf of the appellant, R.W.1 was examined and Ex.R.1 was marked.

10. Admittedly, the Insurance policy, validity and permit were in existence at the time of accident. However, no damage was caused to the vehicle and the 1st respondent is also a license holder, which is evident from the report of Motor vehicle Inspector, Ex.P.3. The learned Chief Judicial Magistrate, Sathyamangalam has passed a Judgment in C.C.No.1765 of 2001, in which the 2nd respondent was punished and the same is clear from Ex.P.7, copy of the Judgment.

11. With regard to the negligence aspect, on behalf of the appellant, R.W.1, one Dhanapal had stated that the 1st respondent was inside the lorry as a passenger, however, as per the insurance policy, the vehicle is meant only for carrying goods and not passengers. Apart from that, in the FIR, Ex.P.1, 1st respondent had stated that he had come from Sikcola to Thalavadi for festival at Mariamman temple and therefore, the appellant's contention is that since the 1st respondent was travelled as a passenger, they are not liable to pay compensation. But in the cross examination, he has stated that around 6 members can travel as a coolie persons. When

the official on behalf of the Insurance company during cross examination has stated that 6 persons can travel as coolie persons, this Court is of the view that there is no violation in the insurance policy.

12. From the materials available on record, it is clear that the claimant and his brother where-off loading the things for Mariamman Festival and he was earning a sum of Rs.70 as daily wages. On going through the evidence, it is clear that the claimant and his brother were getting down at a place near Thalavadi for Mariamman Festival, they tried to get down at Thippu circle and they were transporting the materials for the said festival. After taking the materials from the lorry, the claimant was trying to get down from the lorry, immediately, the driver of the lorry has driven the vehicle, hence, the claimant has fallen down and sustained injury. That being the case, it is clear that the claimant was working as a coolie in the said vehicle. As per the criminal proceedings, it is clear that due to the negligence and careless act of the driver of the lorry bearing Registration No.KA.16 271, the claimant sustained injury has been proved and also paid the fine and that being the case, this Court is of the view that the said person was not travelled as a passenger, but travelled as a coolie.

13. Though the appellant / Insurance Company had requested the 1st respondent / claimant to collect the amount paid by them towards the 3rd party charges and proof of the same was also produced, the 1st respondent / claimant by citing various judgments before the Tribunal submitted that though there is violation in terms of the insurance policy, the insurance company is liable to compensate the 3rd party. Therefore, the Tribunal taking note of the FIR, Ex.P.1, had stated that the brother of the 1st respondent had also travelled in the lorry and thereby fixed the negligence on the 2nd respondent, which in the considered view of this Court needs no interference.

14. With regard to the quantum also, the Tribunal has rightly fixed the loss of income, pain and sufferings and Nutrition expenses by considering the Exhibits and the witnesses marked on either side. Though there is no documents produced on behalf of the 1st respondent to substantiate his income, the Tribunal by taking into account that he is a loadman in lorry, has rightly fixed his daily wage at Rs.70/-, thereby calculated his monthly income at Rs.2,100/- and annual income at Rs.25,200/- and rightly applied multiplicand also. Further, the 1st respondent has not produced any documents to prove his age, the Tribunal

taking shelter of wound certificate, Ex.P.2 has rightly fixed his age as 25 and taking into account of Ex.P.10, Disability certificate, has fixed 55% disability. Apart from that, the amount awarded under other heads are also just and reasonable. Therefore, this Court is of the opinion that the amount awarded by the Tribunal does not require any interference in the eye of law.

In the result, the present Appeal is dismissed and the Judgment and Decree dated 08.02.2002 in M.C.O.P.No.200 of 2001 on the file of Motor Accident Claims Tribunal, (Principal Subordinate Judge) Gobichettipalayam is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

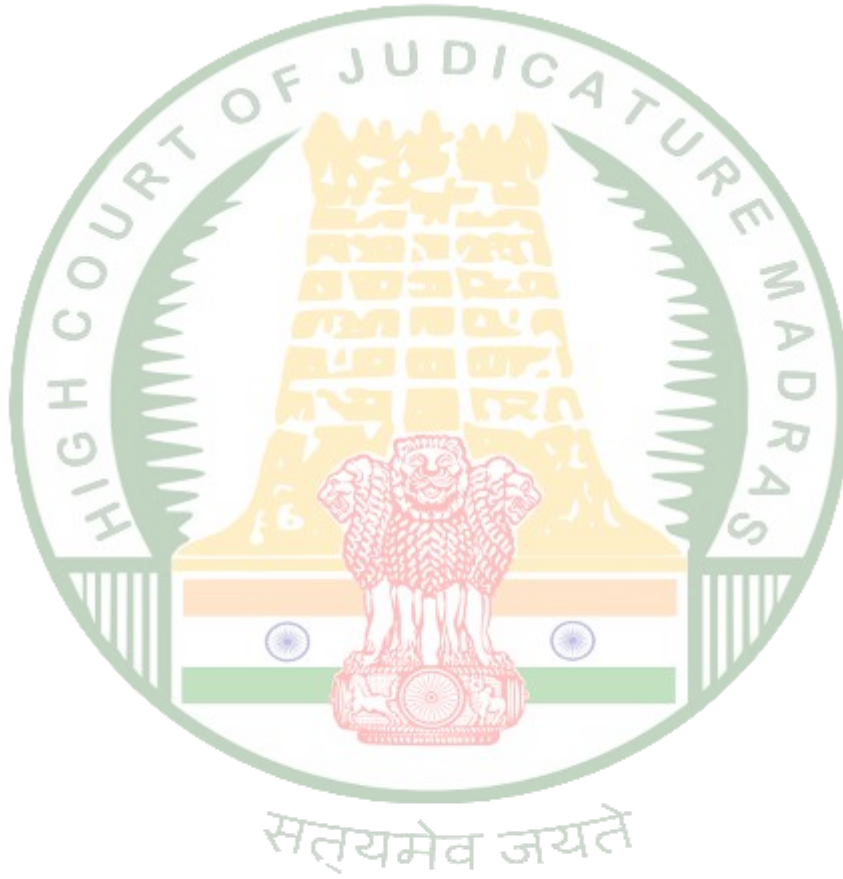
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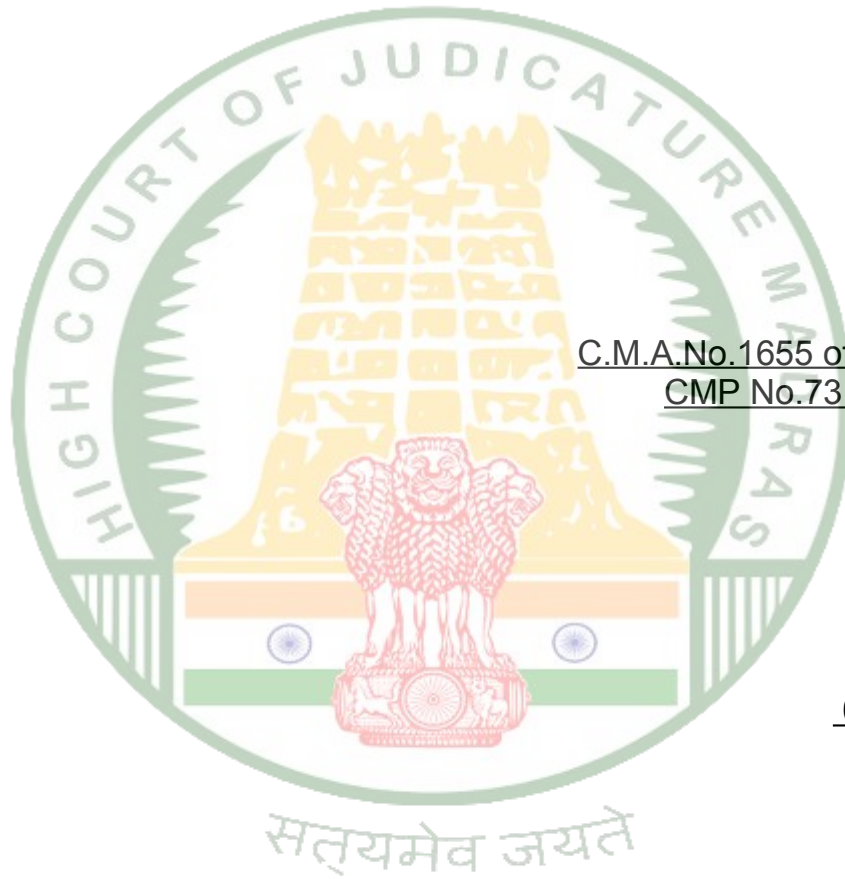
1. The Motor Accident Claims Tribunal, (Principal Subordinate Judge) Gobichettipalayam.
2. The Section Officer,
VR Section, Madras High Court, Chennai



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V.BHAVANI SUBBAROYAN, J.,

ssd



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