

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1162 of 2011
and M.P.No.1 of 2011

The New India Assurance Co. Ltd.
Chembur Branch
Charishma Center
19th road, Chembur
Mumbai-400 077.

... Appellant /2nd Respondent

Vs.

1.G.Sheriff

2.M/s.Petro Rasayan Carriers
J-26, Sector-13, Vashi
New Bombay 400 703.

3.The Managing Director
Tamil Nadu State Transport Corporation Ltd.
Salem Division-II
Bharathipuram, Dharmapuri.

... Respondents/Claimant/
1st and 3rd Respondent

(R2 remained exparte before the Tribunal and hence
notice to the 2nd respondent is dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of Motor Vehicles Act, 1988, against the judgment and decree
dated 03.11.2010 made in M.C.O.P.No.1287 of 2002 on the file of
Motor Accident Claims Tribunal, Chief Judicial Magistrate's
Court, Krishnagiri.

For Appellant	:	Mr.R.Sivakumar
R 2	:	Exparty
R1,R3	:	Not ready notice

J U D G M E N T

The matter is heard through "Video-conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 03.11.2010 made in M.C.O.P.No.1287 of 2002 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate-s Court, Krishnagiri.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.1287 of 2002 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri. The 1st respondent filed the said claim petition claiming a sum of Rs.3,50,000/- as compensation for the injuries sustained by him in the accident that took place on 19.06.2002.

3.According to the 1st respondent, on the date of accident i.e., on 19.06.2002, at 08.15 a.m., while the 1st respondent was boarding the bus belonging to the 3rd respondent/Transport Corporation, getting ticket to travel upto Shoolagiri and when the bus was proceeding towards Krishnagiri in Hosur-Krishnagiri National Highways Road, near Ashok Leyland Company, a lorry belonging to the 2nd respondent insured with the appellant/Insurance Company driven by its driver in a rash and negligent manner, dashed against the rear portion of the bus and caused the accident. Due to the accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the respondents 2 and 3 and the appellant.

4.The 2nd respondent, owner of the lorry remained exparte before the Tribunal.

5.The appellant/Insurance Company being insurer of the lorry filed counter statement denying the averments made by the 1st respondent and stated that the 1st respondent had not boarded or travelled in the bus belonging to the 3rd respondent. The wound certificate produced by the 1st respondent shows that he got admitted in the far away hospital after ten days of the accident. The 1st respondent has made a false claim to get compensation. The driver of the lorry belonging to the 2nd respondent drove the same carefully and the accident has occurred only due to sudden and negligent stoppage by the driver of the bus belonging to the 3rd respondent on the thar road. The driver of the lorry belonging to the 2nd respondent had no valid driving license at the time of accident. Therefore, the appellant/Insurance Company is not liable to pay compensation to the 1st respondent. The appellant/Insurance Company has also denied the age, occupation and income of the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.S.Krishnakumar, was examined as P.W.2 and marked five documents as Exs.P1 to P5. The appellant/Insurance Company examined one Marappan, Head Constable as R.W.1, one N.Karthick, official of the appellant/Insurance Company as R.W.2 and one Selvam, driver of the bus as R.W.3 and marked seven documents as Exs.R1 to R7.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent and directed the 2nd respondent as well as the appellant/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.1,00,500/- as compensation to the 1st respondent.

8.Against the said award dated 03.11.2010 made in M.C.O.P.No.1287 of 2002, the appellant/Insurance Company has come out with the present appeal.

9.Though the learned counsel appearing for the appellant raised various grounds with regard to quantum of compensation in the grounds of appeal, at the time of arguments, he has restricted his arguments only with regard to liability fastened on them.

10.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in holding that the driver of the lorry was negligent and responsible for the accident. The Tribunal failed to see that as per the charge sheet, only one person was injured in the accident. The 1st respondent did not travel in the bus at the time of accident and was not injured in the accident. The 1st respondent failed to prove that he travelled in the bus and got injured in the accident. The Tribunal has not properly appreciated the evidence of R.W.1 and R.W.2 and the documents marked by the appellant. The learned counsel further contended that six false claim petitions have been filed and subsequently, four claim petitions were dismissed as not pressed. The 1st respondent himself admitted that he did not take treatment in the nearby hospital and got admitted in the hospital 45 kilometers away from the place of occurrence. Except oral evidence of 1st respondent, no evidence was let in to prove the case of the 1st respondent. The learned Judge erred in accepting the evidence of 1st respondent that he suffered injuries in the accident and sustained 30% disability, when the 1st respondent failed to prove that he sustained injuries in the accident that occurred on 19.06.2002. When a fraud has been played by the 1st respondent, the Tribunal ought to have dismissed the claim petition and prayed for

setting aside the award of the Tribunal and for allowing the appeal.

11. Heard the learned counsel appearing for the appellant and perused the entire materials on record.

12. From the materials on record, it is seen that it is the contention of the 1st respondent that he travelled in the bus belonging to the 3rd respondent on 19.06.2002, the driver of the lorry belonging to the 2nd respondent drove the lorry in a rash and negligent manner, dashed on the back side of the bus and caused the accident. In the accident, the 1st respondent sustained grievous injuries. To substantiate the said contention, the 1st respondent examined himself as P.W.1 and marked F.I.R. as Ex.P1, which has been registered against the driver of the lorry belonging to the 2nd respondent insured with the appellant/Insurance Company. F.I.R. was registered based on the complaint given by the driver of the bus belonging to the 3rd respondent stating that some persons were injured in the accident. On the other hand, it is the contention of the appellant that claim of the 1st respondent is fraudulent one, he did not travel in the bus and was not injured in the accident that occurred on 19.06.2002. The 1st respondent did not take treatment in the nearby hospital, but has taken treatment only in the hospital 45 kilometers away from the place of occurrence. The appellant relied on evidence of R.W.1/Head Constable and R.W.2/official from the appellant/Insurance Company and has filed charge sheet as Ex.R1 stating that in the charge sheet, it has been mentioned that only one person viz., Indra Gandhi, who sat on the back seat of the bus was injured.

13. According to the appellant, the 1st respondent was admitted in the Government Hospital, Denkanikottai, after ten days of the accident. The appellant has not produced any document to show that the 1st respondent was admitted in the hospital only on 28.06.2002. On the other hand, in column-12 and 13 of the claim petition, the 1st respondent has stated that he took treatment as in-patient in the Government Hospital, Denkanikottai, from 19.06.2002, the date of accident, continued treatment in private hospital and Dr.Ambedkar Government Hospital, Bangalore and examined himself as P.W.1 and deposed to that effect. When the 1st respondent has specifically stated that he has taken treatment from 19.06.2002 in the Government Hospital, Denkanikottai, it is for the appellant to disprove the said contention by producing acceptable evidence from the hospital. The appellant is relying on the letters written to the Deputy Superintendent of Police, Dharmapuri and Krishnagiri, about the claim of the 1st respondent and others. From the award of the Tribunal, it is seen that the Deputy Superintendent of Police

did not send any reply and the appellant did not take any follow up action. The Tribunal has also held that the appellant has not given any complaint in this regard.

14. Considering all the above materials in its entirety, the award of the Tribunal holding that the 1st respondent sustained injuries in the accident occurred on 19.06.2002 due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent, insured with the appellant and the appellant is liable to pay the compensation is valid and the same does not warrant any interference by this Court.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.1,00,500/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. Both the 2nd respondent and the appellant/Insurance Company are jointly and severally directed to deposit the entire amount awarded by the Tribunal 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. On such deposit, the 1st respondent is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Krishnagiri.

Copy to

The Section Officer,
VR Section,
High Court, Madras.

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and M.P.No.1 of 2011

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