

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3633 OF 2008

AND

M.P.NO.1 OF 2008

AND

C.M.P.NO.21894 OF 2018

The Branch Manager,
The New India Assurance Company Limited,
No.1 Officers Line,
Vellore - 1. .. Appellant/3rd Respondent

Vs.

1.Sam Jebadurai .. 1st Respondent/Claimant

2.G.Aruna

3.Devella Husiani Babu .. Respondents 2 and 3/
Respondents 1 and 2

(R2 & R3 remained exparte before Tribunal.
Hence, notice dispensed with)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.12.2007 made in M.C.O.P.No.346 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vellore.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Ms.A.Subadra
for Mr.F.Terry Chella Raja

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 18.12.2007 made in M.C.O.P.No.346 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vellore.

3.The appellant is the 3rd respondent in M.C.O.P.No.346 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vellore. The 1st respondent filed the said claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.02.2003.

4.According to the 1st respondent, on 02.02.2003 at about 04.00 P.M., while the 1st respondent, his wife and his son were travelling in a car bearing Registration No.TN 09 Q 5116 on Tirupattur - Chennai road near Thellur Cross Road at Poigai Mottur, a tipper lorry bearing Registration No.AP 31 W 4317 belonging to the 2nd respondent which was proceeding in front of the car in which the 1st respondent was travelling, the driver of the tipper lorry suddenly turned to his right without any signal. On account of the sudden turn of the said lorry, the car in which the 1st respondent was travelling coming behind the said lorry dashed on the lorry and caused the accident. In the accident, the 1st respondent sustained multiple injuries and was taken to CMC Hospital, Vellore for treatment. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him against the respondents 2, 3 and appellant-Insurance Company.

5.The respondents 2 and 3, being the owner and driver of the lorry bearing Registration No.AP 31 W 4317 remained exparte before the Tribunal.

6.The appellant-Insurance Company, insurer of the lorry belonging to the 2nd respondent filed counter statement and denied all the averments made by the 1st respondent. The appellant-Insurance Company denied the manner of accident. The son of the 1st respondent only drove the car in a rash and negligent manner and dashed against the side of the tipper lorry and thereby caused accident due to which, the 1st respondent sustained injuries. The driver of the lorry drove the same slowly, adhering to traffic rules and only the son of the 1st respondent drove the car at a high speed, dashed against the lorry and invited the accident. Hence, the appellant is not liable to pay any compensation. The 1st respondent has not impleaded the owner and insurer of the car bearing Registration No.TN 09 Q 5116. The 1st respondent has to prove that the 2nd respondent's lorry was insured with the appellant and the 2nd respondent's lorry was having valid vehicular documents such as R.C., I.C., F.C., and the driver of the lorry was possessing valid driving license at the time of accident. The 1st respondent has to prove his age, avocation, income, injuries, disability and treatment taken by producing valid documents. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent examined himself as P.W.3, the claimant in M.C.O.P.No.344 of 2003 was examined as P.W.1, the claimant in M.C.O.P.No.345 of 2003 was examined as P.W.2 and 16 documents were marked as Exs.P1 to P16. On behalf of the appellant, one N.P.Kesavan was examined as R.W.1 and 4 documents were marked as Exs.R1 to R4.

8. The Tribunal considering the pleadings, oral and documentary evidence held that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent and directed the 2nd respondent and the appellant-Insurance Company, being the owner and insurer of the lorry respectively to jointly or severally pay a sum of Rs.62,000/- as compensation to the 1st respondent.

9. Against the said award dated 18.12.2007 made in M.C.O.P.No.346 of 2003, the appellant-Insurance Company has come out with the present appeal.

10. The learned counsel appearing for the appellant contended the claim petition with regard to damage to the car bearing Registration No.TN 09 Q 5116 filed by the 1st respondent is not maintainable as the car belongs to "M/s.Antentalla Appam Trust". The Trust made the claim for the damages to the car. The appellant paid a sum of Rs.2,48,940/- as full and final settlement to the authorized dealer on behalf of the Trust. The Trust has not filed any claim petition claiming compensation for repairing the damages caused to the car. The 1st respondent has not filed the claim petition as trustee of the "M/s.Antentalla Appam Trust". The 1st respondent is not the owner of the car. The Tribunal failed to properly appreciate the evidence of R.W.1, Exs.R1 to R4, the Registration Certificate, the claim form, receipts and final survey report and that appellant has proved that 1st respondent is not entitled to claim any compensation for further amounts for repairing charges. The Trust, who is the owner of the car did not make any claim and if any dispute, it has to approach other forum and no claim petition can be filed by the Trust. The Tribunal failed to see that no authenticated document was filed to prove that owner of the car has incurred further expenses for repairing the car, over and above the amounts settled by the appellant-Insurance Company towards own damage claim and prayed for setting aside the award of the Tribunal.

11. Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent is the founder trustee of "M/s.Antentalla Appam Trust" and he is the Managing Trustee till his lifetime. In view of the same, the claim petition filed for the damages to the car is maintainable. The Tribunal has considered all the materials placed before it and

has rightly directed the appellant to pay a sum of Rs.50,000/- towards repairing charges. The learned counsel appearing for the 1st respondent further contended that 1st respondent has filed C.M.P.No.21894 of 2018 to receive the deed of Trust and supplementary deed as additional documents to prove that 1st respondent is the founder of "M/s.Antentalla Appam Trust" and Managing Trustee of the said Trust and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13.From the materials available on record it is seen that the 1st respondent has filed the claim petition in M.C.O.P.No.346 of 2003 claiming a sum of Rs.1,00,000/- as compensation for pain and sufferings for the injuries, Rs.96,000/- for the cost of repairing the damages to the car and Rs.4,000/- for incidental expenses, totally Rs.2,00,000/- as compensation. The 1st respondent examined himself as P.W.3 and the appellant examined one N.P.Kesavan as R.W.1 and marked Exs.R1 to R4. The learned counsel appearing for the appellant contended that the 1st respondent is not the owner of the car bearing Registration No.TN 09 Q 5116 and "M/s.Antentalla Appam Trust" is the owner of the car and the same is proved by marking Ex.R1/R.C. Book of the car. The appellant has also marked Ex.R2/claim form submitted by the trust. The appellant considering the claim made by the Trust, paid a sum of Rs.2,48,940/- as full and final settlement to the authorized dealer who repaired the car on behalf of the Trust. The appellant has produced Ex.R3/receipts issued by the dealer who repaired the car. The owner of the car - "M/s.Antentalla Appam Trust" has not made any claim for any further amount being spent for repairing the car. A reading of the claim petition shows that 1st respondent has filed the claim petition in M.C.O.P.No.346 of 2003 in his individual capacity and not as a Trustee. Further the 1st respondent has not filed any document to show that he spent a sum of Rs.96,000/- for repairing the car. The Tribunal has granted a sum of Rs.50,000/- as compensation for damages to the car. The Tribunal has not given any particulars as to how it arrived at Rs.50,000/- to be paid to the 1st respondent. The Tribunal failed to consider Exs.R1 to R3 in proper perspective and the fact that Trust has not made any claim, erroneously without assigning any reason, awarded a sum of Rs.50,000/- towards compensation for damages to the car. The compensation so awarded by the Tribunal is liable to be set aside and it is hereby set aside. The 1st respondent has filed the claim petition in his individual capacity and therefore, C.M.P.No.21894 of 2018 filed by the 1st respondent to receive additional document is not entertained and it is hereby

dismissed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and sufferings	5,000/-	5,000/-	Confirmed
2.	Medical expenses	7,000/-	7,000/-	Confirmed
3.	Damages to car	50,000/-	-	Set aside
	Total	Rs.62,000/-	Rs.12,000/-	Reduced by Rs.50,000/-

14. With the above modification, this Civil Miscellaneous Appeal is allowed and sum of Rs.62,000/- awarded by the Tribunal as compensation to the 1st respondent is hereby reduced to Rs.12,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent and appellant-Insurance Company are jointly or severally directed to deposit the modified award amount now determined by this Court 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.346 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vellore. On such deposit, the 1st respondent is permitted to withdraw the modified award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant / Insurance company is permitted to withdraw the excess amount, if any lying in the deposit, the credit of M.C.O.P.No.346 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vellore, by making necessary applications before the Tribunal.

15. It is made clear that if any amount is deposited by the appellant-Insurance Company and the same has been withdrawn by the 1st respondent, the appellant is not entitled to recover the same from the 1st respondent. Consequently, M.P.No.1 of 2008 is closed. C.M.P.No.21894 of 2018 is dismissed. No costs.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

krk

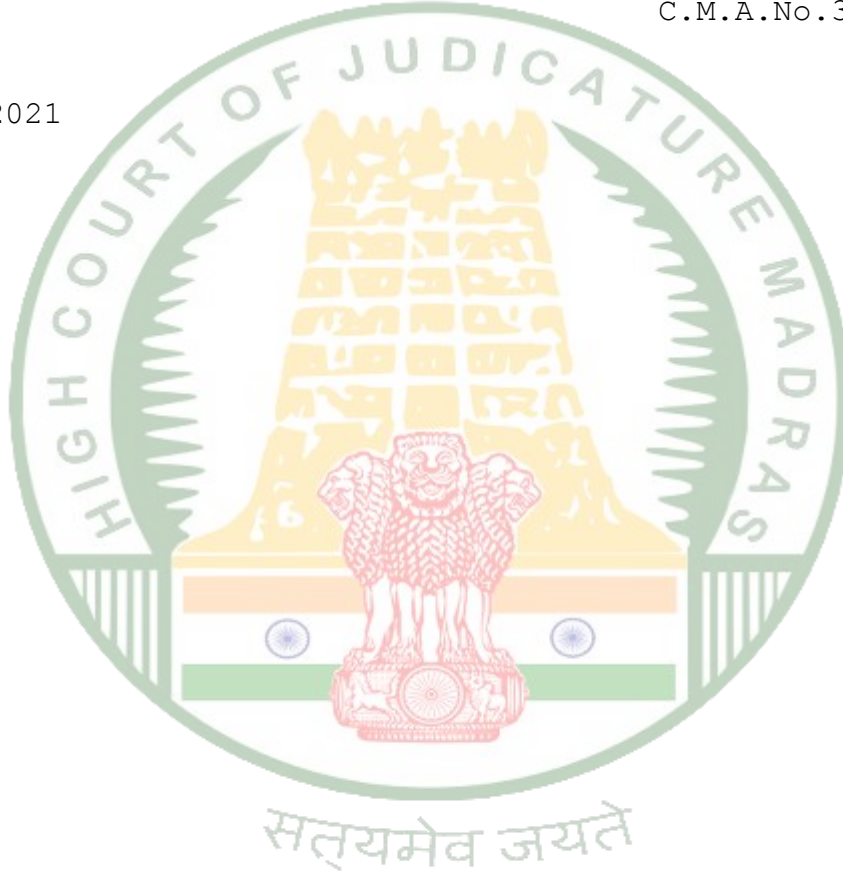
To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Vellore.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.F.Terry Chella Raja, Advocate, S.R.No.37207

C.M.A.No.3633 of 2008

VBA (CO)
CS/02/07/2021



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