

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 3796 of 2008  
and M.P. No. 1 of 2008

United India Insurance Company Limited  
No.5, Big Bazaar Street  
Dharapuram. .. Appellant /3<sup>rd</sup> Respondent

Vs.

1.Rajendran .. Petitioner/1<sup>st</sup> Respondent  
2.Sivakumar .. 2<sup>nd</sup> Respondent/ 1<sup>st</sup> Respondent  
3.M/s.Selvakumarasami Transport  
No.1, Ponnu Nilayam  
Alangiyam Road  
Dharapuram. ..3<sup>rd</sup> Respondent/2<sup>nd</sup> Respondent  
[R2&R3 set exparte before the Tribunal]

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 11.06.2007, made in M.C.O.P. No. 249 of 2006 (349/05 - Sub Court) on the file of the Motor Accident Claims Tribunal (ADJ - FTC III), Dharapuram.

For Appellant : Ms. I. Malar  
1<sup>st</sup> Respondent : Not Ready in Notice  
2<sup>nd</sup> and 3<sup>rd</sup> Respondents: Exparte before the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 11.06.2007, made in M.C.O.P. No. 249 of 2006 on the file of the Additional District Judge, Fast Tract Court No - III, Dharapuram (earlier M.C.O.P. No. 349 of 2005 on the file of the Sub Court).

2.The appellant is the 3<sup>rd</sup> respondent in M.C.O.P. No. 249 of 2006 on the file of the Additional District Judge, Fast Tract Court No - III, Dharapuram (earlier M.C.O.P. No. 349 of 2005 on the file of the Sub Court). The 1<sup>st</sup> respondent filed the said

claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.06.2005.

3. According to the 1<sup>st</sup> respondent, on the date of accident viz., 05.06.2005, when he was riding as a pillion rider in the TVS 50 driven by one Arumugam at the junction of the Alangiyam by-pass road, the 2<sup>nd</sup> respondent, driver of the Bus belonging to the 3<sup>rd</sup> respondent drove the same in a rash and negligent manner, dashed on the backside of the two wheeler in which the 1<sup>st</sup> respondent travelled and caused accident. In the accident, the 1<sup>st</sup> respondent sustained grievous injuries and the rider Arumugam died on the spot. Due to rash and negligent driving on the part of the 2<sup>nd</sup> respondent/ driver of the Bus belonging to the 3<sup>rd</sup> respondent, the accident has occurred. Hence, the 1<sup>st</sup> respondent claimed a sum of Rs.10,00,000/- as compensation against the respondents 2 & 3 as well as the appellant/Insurance Company.

4. The respondents 2 and 3 remained exparte before the Tribunal.

5. The appellant-Insurance Company filed counter statement and denied various averments made by the 1<sup>st</sup> respondent in the claim petition. According to the appellant, the rider of the two wheeler in which the 1<sup>st</sup> respondent travelled as pillion rider, did not possess valid driving license and drove the vehicle in a negligent manner and crossed the road suddenly. Hence, the accident did not occur due to rash and negligent driving by the 2<sup>nd</sup> respondent/ driver of the Bus and the appellant- Insurance Company is not liable to pay any compensation to the 1<sup>st</sup> respondent. In any event, the 1<sup>st</sup> respondent has to prove the age, avocation, income, injuries sustained and treatment taken to claim compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1<sup>st</sup> respondent examined himself as P.W.1 and examined one Doctor as P.W.2 and marked 30 documents as Exs.P1 to P30. The appellant examined its Senior Officer as R.W.1 and examined Record Clerk of the Regional Transport Office as R.W.2 and marked one document as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2<sup>nd</sup> respondent/driver of the Bus belonging to the 3<sup>rd</sup> respondent and directed the appellant-Insurance Company, as insurer, to pay a sum of Rs.5,15,000/- as compensation to the 1<sup>st</sup> respondent.

8. Against the said award dated 11.06.2007, made in M.C.O.P. No. 249 of 2006, the appellant-Insurance Company has come out with the present appeal.

9. The learned Counsel appearing for the appellant contended that the Tribunal erred in awarding compensation to the 1<sup>st</sup> respondent holding that the accident had occurred due to rash and negligent driving by the 2<sup>nd</sup> respondent, driver of the bus, in the absence of any documentary evidence. The Tribunal erred in fixing notional income of the 1<sup>st</sup> respondent at Rs.2,500/- and did not apply appropriate multiplier following the judgment of the Hon'ble Division Bench of this Court as well as the Hon'ble Apex Court. The Tribunal erred in granting compensation for partial loss of earning and disability separately. P.W.2/Doctor assessed and certified that the appellant suffered 60% disability. The Tribunal without considering the same, has awarded a sum of Rs.2,70,000/- towards loss of earning, Rs.60,000/- towards permanent disability and Rs.15,000/- towards partial loss of earning. The Tribunal did not consider that rider of two wheeler did not possess driving licence at the time of accident. The Tribunal erred in directing the appellant to pay compensation and prayed for setting aside the award of the Tribunal.

10. Heard the learned counsel appearing for the appellant and perused the materials placed on record.

11. It is the contention of the 1<sup>st</sup> respondent that while he was travelling in TVS 50, the 2<sup>nd</sup> respondent drove the Bus belonging to the 3<sup>rd</sup> respondent in a rash and negligent manner and dashed against the TVS 50 from behind and caused the accident. In the accident he suffered injuries. To substantiate the said contention, the 1<sup>st</sup> respondent examined himself as P.W.1 and marked FIR, which was registered against the 2<sup>nd</sup> respondent/driver of the Bus, as Ex.P1. On the other hand, it is the contention of the appellant that the accident has occurred due to rash and negligent act of the rider of the two wheeler and the 2<sup>nd</sup> respondent is not negligent and he is not responsible for the accident. The appellant did not let in any evidence to substantiate this contention. The appellant examined R.W.1, the official of the appellant and R.W.2, the Record Clerk of the Regional Transport Office. The evidence let in by the appellant by examining R.W.1 and R.W.2 is only with regard to not possessing driving licence by the rider of the two wheeler. The appellant did not examine the 2<sup>nd</sup> respondent/driver of the bus or any eye-witness to prove their contention that the accident had occurred only due to the negligence on the part of the rider of the two wheeler. In the absence of any contra-evidence to the evidence of the 1<sup>st</sup> respondent, the Tribunal considering the

evidence of P.W.1, Ex.P1-FIR, held that the accident has occurred only due to rash and negligent driving by the driver of the Bus, the 2<sup>nd</sup> respondent. There is no error in the said finding of the Tribunal, warranting interference by this Court.

12.As far as the quantum of compensation is concerned, the 1<sup>st</sup> respondent has contended that he was running a Tea-stall as well as Bakery and was earning a sum of Rs.5,000/- per month. He has failed to substantiate the said contention by letting in any acceptable evidence. In the absence of any materials with regard to income to the 1<sup>st</sup> respondent, the Tribunal fixed a sum of Rs.2,500/- per month as notional income of the 1<sup>st</sup> respondent. The accident is of the year 2005 and the notional income fixed by the Tribunal is not excessive. The 1<sup>st</sup> respondent has produced wound certificate, discharge summary and accident register. The 1<sup>st</sup> respondent also examined P.W.2/Doctor who treated the appellant and conducted surgery. P.W.2 Doctor examined the 1<sup>st</sup> respondent and assessed that the 1<sup>st</sup> respondent suffered 60% disability and deposed the nature of injuries, treatment given to him in the Hospital.

13.From the materials on record, it is seen that left leg of the 1<sup>st</sup> respondent was amputated below knee and P.W.2-Doctor assessed the disability as 60%. In the absence of any contra-evidence, the Tribunal accepted the same. Considering the nature of work, amputation below knee, injuries suffered and the disability sustained by the 1<sup>st</sup> respondent, the Tribunal adopted multiplier method and granted compensation under different heads which are not excessive.

14.For the above reasons, the appeal is dismissed and the compensation awarded by the Tribunal at Rs.5,15,000/- together with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the compensation awarded by the Tribunal, along with interest and costs, 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. 249 of 2006. On such deposit, the 1<sup>st</sup> respondent is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

maya/gsa

To

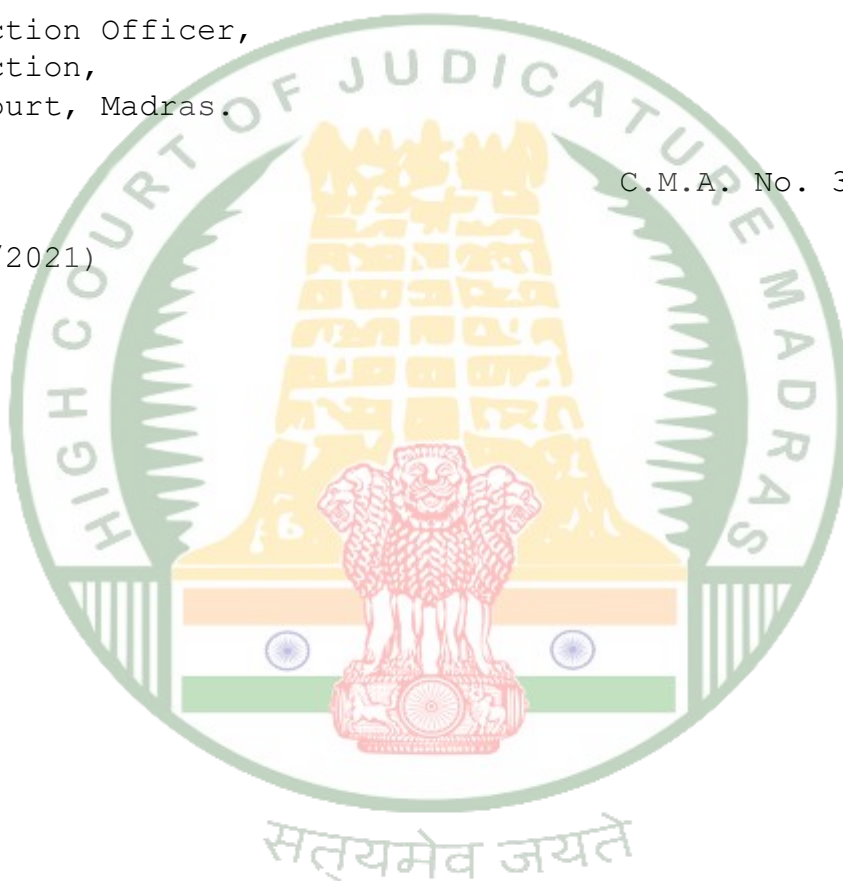
1.The Additional District Judge,  
Fast Track Court-III,  
(Motor Accident Claims Tribunal),  
Dharapuram.

Copy to :

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

C.M.A. No. 3796 of 2008

GN (CO)  
RMP (22/04/2021)



WEB COPY