

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.3328 of 2010 and
M.P.Nos.1 and 1 of 2011 and 2015

National Insurance Company Ltd.,
37/40, Salem Main Road,
Mettur Dam, R.S.Mettur Dam - 2
Mettur Taluk,
Salem District

... Appellant /4th respondent

Vs

1. Saravanan
2. P.Kaliyanan
3. United India Insurance Company Ltd.,
Namakkal, Namakkal District
4. V.Uma Devi

... Respondents/Petitioner/
Respondent 1 to 3

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to set aside the Judgment and Decree dated 28.04.2006 made in M.C.O.P.No.108 of 2000 on the file of Motor Accident Claims Tribunal (Sub-Court), Mettur.

For Appellant : Mr. D.Baskaran

For Respondents : Mr.N.S.Sivakumar for R1
Mr.C.Paranthaman for R3
R2 to R4 -set exparte before the
Tribunal

J U D G M E N T

This appeal has been filed by the 4th respondent in the claim petition, viz., National Insurance Company Ltd., Salem against the award and decree dated 28.04.2006 made in MCOP No.108 of 2000 before the Motor Accidents Claim Tribunal, Sub Court, Mettur.

2. The case of the claimants before the Tribunal was that the 1st respondent, who was a lorry driver was driving TATA 407 lorry bearing regn. No.TN 27 Y 7151 belonging to the 2nd

respondent herein from Tanjavur to Mettur dam, at Salem to Namakkal Main road, at Andaloor gate near Pavai Magalir Polytechnic, on 15.02.1999, a lorry bearing regn. No.KA 01 9547 came in a opposite direction driven rashly and negligently and dashed against 1st respondent's vehicle and due to the said impact, the 1st respondent sustained multiple fracture in the thigh bone. He was admitted in the hospital at Salem and thereafter shifted to Kovai Medical Centre, Coimbatore and he was under treatment till 27.05.1999, in which he sustained 100% functional disability and during the course of treatment, he has spent Rs.3,00,000/- for his treatment including transportation, boarding and lodging. He would further submit that he had done further surgeries for removal of bone plate after three months from the date of discharge, which would also cause another a lakh of rupees and the 1st respondent had claimed that he was earning Rs.4,000/- per month at the time of accident and he was immobilized due to the said accident and now he is earning only Rs.1,000/- by working in a STD Booth.

3. The appellant/Insurance Company herein was a fourth respondent before the Tribunal and they had filed a counter before the Tribunal denying all the averments and stated that the claimant did not have a valid driving license at the time of accident and they are unnecessary party in this appeal, as the total responsibility for the accident was to be assailed over to the appellant and 2nd respondent, namely, the owner of the vehicle and the insurance company to which it was insured.

4. The appellant herein had stated in the counter that the accident has taken place only due to the negligence of the claimant and not because of the act of the driver, who drove the lorry bearing regn. no.KA 01 9547. The 3rd respondent herein in this appeal is the insurer of the 1st respondent's vehicle, namely, TN 27 Y 7151 and also filed a separate counter merely denying the allegations made in the claim petition as false and frivolous.

5. Before the Tribunal, on the side of the claimant / 1st respondent, he has examined himself as P.W.1 and P.W.2, Dr.Kamalanathan, Asst. Professor, was examined as an expert witness and marked Exs.A.1 to A.22. No evidence neither oral or documentary was marked by the appellant before Tribunal. The Tribunal after considering the above said materials on record and facts and circumstances and placing reliance on the evidences, awarded a total amount of Rs.5,08,000/- as compensation. Aggrieved by the said award, the present appeal is filed by the 4th respondent, i.e, Insurance Company, in which the vehicle bearing Regn. No. KA 01 9547 was insured.

6. The learned counsel for the appellant submitted that the Tribunal ought not to have allowed the claim petition by recording that both the claimant as well as the driver who drove the KA 01 9547 was equally responsible for the accident, as it was the claimant alone was responsible for the accident and appellant ought not have made as a party. The said counsel also vehemently argued that the Tribunal had fixed the liability on them as 50%, which is unsustainable and the entire liability ought to have been fixed as against the insurer of the vehicle driven by the claimant.

7. The learned counsel appearing for the appellant has relied upon various Judgments, which in fact, is not relatively similar in nature neither in law nor on facts. On the side of the 3rd respondent, Mr.C.Paranthaman, learned counsel, argued that the award passed by the Tribunal has to be sustained for the reason that the Tribunal has fairly fixed the liability equally on both the vehicles, though the claimant pleaded before the Tribunal that it was the vehicle, which was coming from the opposite direction is responsible for the accident, who drove the vehicle in rash and negligent manner causing the accident.

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

9. It is clear from the pleadings as well as the evidence let in by the claimant before the Tribunal that the manner of accident is the head on collision. It is not the case where the claimant vehicle was in a static position and the vehicle from the opposite direction has come and hit the vehicle. The claimant / 1st respondent himself has accepted in his claim petition as well as in the evidence let in by him that the accident took place around 4.30 a.m. in the morning, when the claimant was returning from Tanjavur to Mettur Dam and the vehicle bearing Regn.No.KA 01 9507 came from the opposite direction and hit the claimant's lorry. The case of head on collision occurs only when the vehicle coming from the opposite side hits the vehicle on the wrong side, it cannot be said that only one vehicle was negligent and liable to cause the accident and both the vehicles were running in the opposite direction. It is very difficult for the court to fix the liability on one vehicle leaving the other one free. Even though one of the vehicle was moving slowly, in that circumstances, the Tribunal determined the negligence as 50% : 50% on both the vehicles.

10. As it is clear that the court below has rightly fixed the liability as 50% : 50% on both the vehicles, the arguments advanced by the learned counsel for the appellant in this regard

and the judgments relied upon by the learned counsel for the appellant do not fit into the circumstances of the present case and this Court is not able to accept the contentions raised by the learned counsel for the appellant, who vehemently contended that it was a claimant's vehicle which is the cause for the accident. When the appellant / Insurance company has not taken any steps to examine the driver of the lorry KA 01 9547, there is no infirmity in fixing the liability as 50%: 50% on either side of the vehicles, which were insured with the appellant's company and the 3rd respondent's company, which are liable to pay, as per the terms and conditions.

11. With regard to the quantum, as claimed by the learned counsel for the appellant, this Court is of the view that when the claimant has accepted that he was earning Rs.4,000/- as driver and after the accident, he was working in the telephone booth earning a sum of Rs.1,000/-, the Tribunal has rightly come to the conclusion that the claimant is entitled for Rs.3,000/- as his monthly income, which is the loss for the driver / claimant when he is not able to perform his duty as driver and as his tie bone is broken due to the accident, it is practically impossible to continue his job or avocation as he was doing earlier to the accident. The Tribunal had calculated five years from the date of accident and calculated Rs.3,000/- per month for five years and has rightly awarded a sum of Rs.1,80,000/- as loss of income. Even on the other heads of compensation, very reasonable amount has been awarded and this Court does not find any reason to interfere with the award passed by the Tribunal.

Accordingly, this Court is of the view that the appellant has not made out any case for interference of the order passed by the Tribunal and the appeal fails. The present Civil Miscellaneous Appeal is dismissed and the award passed by the court below in M.C.O.P.No.108 of 2000 dated 28.04.2006 is confirmed. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-

Assistant Registrar

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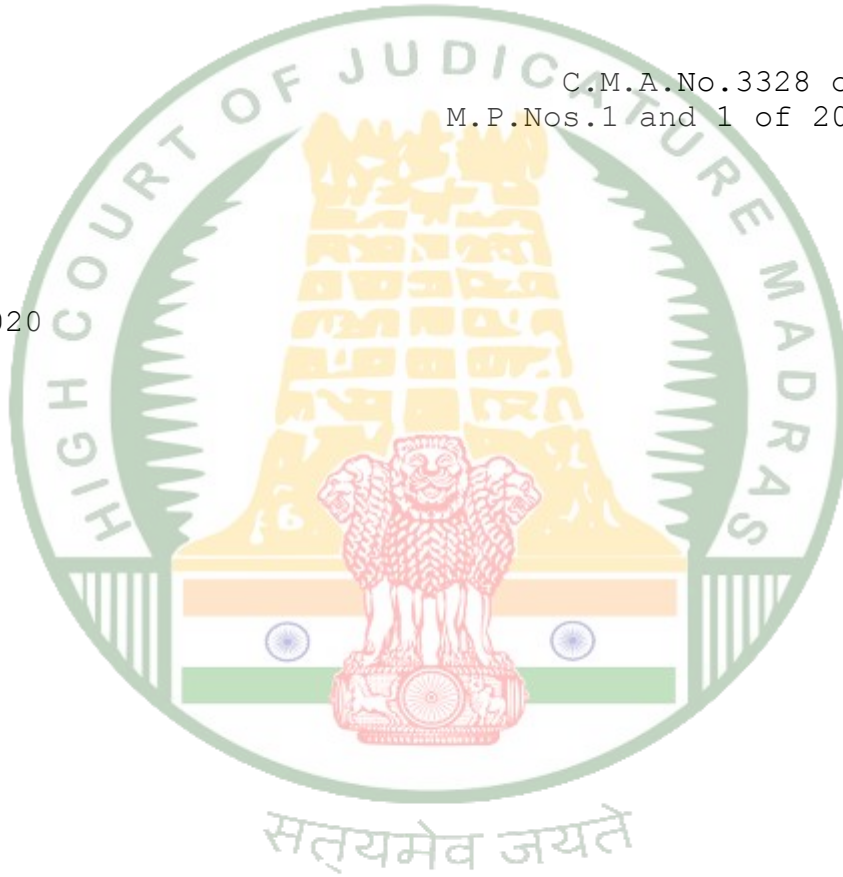
1. The Motor Accident Claims Tribunal
(Sub-Court), Mettur.

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

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M.P.Nos.1 and 1 of 2011 and 2015

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