



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3342 of 2010

Kolandai Ammal

...Appellant / Petitioner

Vs.

1.P.Mani

2.The New India Assurance Company Limited,
East Coast Chambers, 1st Floor,
92, G N Chetty Road, Chennai.

3.Meena Chandrasekhar

4.The National Insurance Company Limited,
Registered Office, No.3,
Shriram Chit Office, Chennai.

...Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.02.2010 made in M.C.O.P.No.604 of 2005 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Salem.

For Appellant : Mr.K.Varadha Kamaraj
for Mr.T.S.Vijayaraghavan

For R2 : Ms.Eleveera Ravindran

For R4 : Mr.D.Bhaskaran

For R1 & 3 : Exparte

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 17.02.2010 made in M.C.O.P.No.604 of 2005 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Salem.



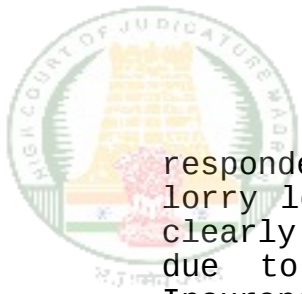
3.The appellant is the claimant in M.C.O.P.No.604 of 2005 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Salem. She filed the said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by her in the accident that took place on 29.12.2004.

4.According to the appellant, on 29.12.2004 at about 02.45 P.M., while she was travelling in the bus bearing Registration No.TN 27 R 7360 belonging to the 1st respondent on Mettur - Salem road near Kandamur Reliance Petrol Bunk, the tyre of the lorry bearing Registration No.TN 02 K 4000 belonging to the 3rd respondent which was driven by the driver from the opposite direction got burst due to which the driver lost his control and dashed against the bus in which the appellant was travelling and caused the accident. In the accident, the appellant sustained multiple grievous injuries all over her body particularly at shoulder, legs and hands. Immediately after the accident, the appellant was taken to Government Hospital, Mettur. Therefore, the appellant filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation against the respondents, being the owner and insurer of the bus and owner and insurer of the lorry respectively.

5.The respondents 1 and 3 being the owner of the bus and lorry respectively remained exparte before the Tribunal.

6.The 2nd respondent-New India Assurance Company Limited, being the insurer of the bus belonging to the 1st respondent filed counter statement and denied all the averments made by the appellant. According to the 2nd respondent-Insurance Company the accident has occurred only due to the rash and negligent driving by the driver of the lorry belonging to the 3rd respondent. The driver of the 1st respondent's bus drove the bus in a slow and cautious manner following all the traffic rules and only the driver of the 3rd respondent's lorry drove the lorry in a rash and negligent manner and dashed against the bus and caused the accident. Therefore, the 2nd respondent-New India Assurance Company Limited is not liable to pay any compensation to the appellant. The appellant has to prove the age, avocation, income, nature of injuries and expenses incurred towards medical treatment by producing valid documents. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition as against the 2nd respondent-New India Assurance Company Limited.

7.The 4th respondent-National Insurance Company Limited, being the insurer of the lorry belonging to 3rd respondent filed separate counter statement and denied all the averments made by the appellant. According to the 4th respondent-National Insurance Company Limited, the tyre of the lorry belonging to 3rd



respondent got burst and due to the same, the driver of the lorry lost his control and the lorry dashed against the bus. It clearly shows that the accident is an inevitable one and it is due to Act of God. Therefore, the 4th respondent-National Insurance Company Limited is not responsible and not liable to pay any compensation to the appellant. The appellant has to prove her age, avocation, income, nature of injuries, disability, period of treatment and amount spent towards medical treatment by producing valid documents. In any event, the quantum of compensation claimed by the appellant is exorbitant and prayed for dismissal of the claim petition as against the 4th respondent-National Insurance Company Limited.

8.Before the Tribunal, the appellant examined herself as P.W.1 and marked 6 documents as Exs.P1 to P6. The respondents 2 and 4 did not let in any oral and documentary evidence.

9.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition on the ground that the rash and negligent act of both the drivers of bus and lorry were not proved.

10.Against the said order of dismissal dated 17.02.2010 made in M.C.O.P.No.604 of 2005, the appellant has come out with the present appeal for granting compensation.

11.The learned counsel appearing for the appellant contended that the accident has occurred only due to the rash and negligent driving by the driver of the lorry which resulted in bursting of the tyre of the lorry. If the driver of the lorry belonging to 3rd respondent had driven the lorry at a moderate speed, he could have avoided the bursting of tyre and avoided the accident. The Tribunal failed to consider the F.I.R., wherein it has been stated that there was 70 feet distance between the lorry and bus at the time of bursting of tyre of the lorry. There was contributory negligence on the part of the driver of the bus and inspite of such distance, the accident occurred causing grievous injuries to several persons including the appellant. The Police after investigation laid charge sheet against the driver of the lorry belonging to 3rd respondent. The appellant sustained multiple injuries and spent huge amount for treatment. The Tribunal erroneously dismissed the claim petition and prayed for setting aside the award of the Tribunal and for awarding compensation.

12.Per contra, Ms.Eleveera Ravindran, learned counsel appearing for the 2nd respondent-New India Assurance Company Limited, insurer of the bus contended that accident did not occur due to the negligence on the part of the driver of the bus. The accident has occurred due to rash and negligent driving

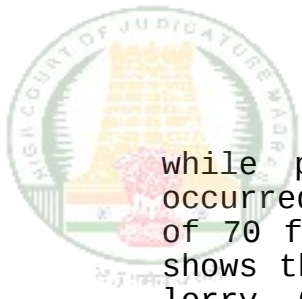


by the driver of the lorry who drove the same in a high speed which resulted in bursting of tyre of the lorry and accident has occurred. F.I.R. was registered against the driver of the lorry and charge sheet also laid against the driver of the lorry. In view of the same, the 2nd respondent-New India Assurance Company Limited being the insurer of the bus belonging to 1st respondent is not liable to pay any compensation to the appellant and prayed for dismissal of the appeal.

13.Mr.D.Bhaskaran, learned counsel appearing for the 4th respondent-National Insurance Company Limited, insurer of the lorry contended that accident did not occur due to the rash and negligent driving by the driver of the lorry belonging to 3rd respondent. The accident has occurred due to burst of tyre of the lorry and it is an Act of God. Due to sudden burst of tyre of the lorry, the lorry hit against the bus and the same cannot be said that the accident has occurred due to the negligent act of the driver of the 3rd respondent's lorry. In view of the same, the 4th respondent-National Insurance Company Limited is not liable to indemnify the owner of the lorry. The Tribunal considering the evidence, dismissed the claim petition against the 4th respondent-National Insurance Company Limited and prayed for dismissal of the appeal.

14.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-New India Assurance Company Limited and the learned counsel appearing for the 4th respondent-National Insurance Company Limited and perused the entire materials on record.

15.From the materials available on record, it is seen that it is the contention of the appellant that due to bursting of tyre of the lorry, the lorry dashed against the bus and accident has occurred. The appellant as P.W.1 has deposed with regard to manner of accident and marked F.I.R. as Ex.P1 and charge sheet laid against the driver of the lorry as Ex.P3. On the other hand, it is the contention of the learned counsel appearing for the respondents 2 and 4 Insurance Companies that there was no negligence on the part of the driver of their insured vehicles. It is the contention of the 4th respondent-National Insurance Company Limited that accident occurred is an Act of God. The Tribunal considering the fact that accident has occurred due to bursting of tyre of lorry, held that there is no contributory negligence on the part of the driver of the lorry belonging to 3rd respondent. The said reasoning is not correct. The Tribunal failed to see that it is the duty of the owner of the vehicle to maintain the vehicle properly so that accident can be avoided when vehicle is used in a public place. In the present case, the 3rd respondent has not maintained the lorry in good condition which resulted in bursting of tyre of the lorry



while plying in the public place and thereby accident has occurred. Due to bursting of tyre, the lorry went to a distance of 70 feet and dashed against the bus and caused accident. This shows that lorry was driven at a high speed by the driver of the lorry. Considering the entire materials on record, this Court is of the view that accident has occurred only due to rash and negligent driving by the driver of the lorry. The 4th respondent-National Insurance Company Limited has not denied the insurance of the lorry. The 4th respondent-National Insurance Company Limited as insurer of the lorry is liable to pay the compensation. The appellant is entitled to compensation and 4th respondent-National Insurance Company Limited is liable to pay the compensation.

16.The appellant marked Accident Register as Ex.P2. The appellant has not examined any Doctor to prove the nature of injuries sustained by her in the accident. The appellant also has not stated that she suffered any grievous injuries. Considering the nature of injuries, it will be just and equitable to award a sum of Rs.15,000/- to the appellant towards injuries. The appellant has produced Ex.P6/medical bills to show that she has purchased medicines for a sum of Rs.13,356/-. Though she has not produced any prescription from medical practitioner to substantiate her claim, considering the fact that she would have spent some amount towards medical expenses, this Court awards a sum of Rs.10,000/- towards medical expenses to the appellant. Thus, the amount awarded by this Court is as follows:

S. No	Description	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Injuries	15,000/-	Granted
2.	Medical expenses	10,000/-	Granted
	Total	Rs.25,000/-	Granted Rs.25,000/-

17.In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.25,000/- is awarded by this Court together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee as per the order of this Court dated 27.10.2010 made in M.P.No.1 of 2010 in C.M.A.SR.No.83041 of 2010. The 4th respondent-National Insurance Company Limited is directed to deposit the award amount now determined by this Court, 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.604 of 2005 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Salem. On such deposit, the appellant is permitted to withdraw



the award amount now determined by this Court, along with interest and costs by making necessary applications before the Tribunal. No costs.

WEB COPY

Sd/-
Assistant Registrar (CCC)

// True Copy //

Sub Assistant Registrar

krk

To

The II Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Salem.

Copy To :

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

+1cc to M/s.T.S.Vijaya Raghavan, Advocate SR.No.35359

C.M.A.No.3342 of 2010

PA(CO)
RVM(01/09/2021)