

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3653 of 2010
and M.P.No.1 of 2010

National Insurance Co. Ltd.,
Pondicherry.

...Appellant/R3 in Tribunal

vs.

1.Vijayaragavan

2.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division-1.

3.Vishvambharan

...Respondents/Petitioner/
Respondents 1 and 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 28.04.2009 in M.C.O.P.No.106 of 2004 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Villupuram.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.V.S.Sivasundaram for R1 -
No appearance
Mr.C.S.K.Sathish for R2
R3 - not known

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 28.04.2009 passed by the Motor Accidents Claims Tribunal, (I Additional Sub Court, Villupuram) in MCOP No.106 of 2004.

2. The first respondent /claimant sustained injuries as a result of an accident on 11.08.2002 involving a bus owned by the second respondent / Transport Corporation and a van insured

with the appellant /Insurance Company. The first respondent was travelling in the bus owned by the second respondent / Transport Corporation and as a result of the collision between the two vehicles, he sustained injuries. He preferred a claim before the Motor Accidents Claims Tribunal ((I Additional Sub Court, Villupuram) in MCOP No.106 of 2004 seeking compensation of Rs.2,00,000/- for the injuries sustained by him.

3. The Motor Accident Claims Tribunal (I Additional Sub Court), Villupuram under the impugned common award fixed the contributory negligence of both the vehicles in the ratio of 50 : 50 and assessed the total compensation payable to the first respondent / claimant at Rs.1,30,000/- together with interests and costs as detailed hereunder :

Heads	Amount awarded by the Tribunal (Rs.)
Grievous injuries	75000
Disability @ 20%	20000
Medical bills	34807
Total	1,29,807
R/o	1,30,000

4. The only ground raised by the appellant /Insurance Company in this appeal is that they are not liable to compensate the claim since the entire negligence for the cause of the accident is on the part of the bus owned by the second respondent / Transport Corporation. According to them, FIR has been registered only against the Driver of the bus owned by the second respondent / Transport Corporation and even as per the pleadings of the first respondent / injured claimant, the Driver of the bus was alone responsible for the cause of the accident. In such circumstances, the appellant / Insurance Company seeks exoneration of its liability to pay the compensation. According to them, the Tribunal has erroneously mulcted the liability on the appellant / Insurance Company despite the fact that the evidence available on record conclusively establishes that it was only the Driver of the bus owned by the second respondent / Transport Corporation, who is responsible for the cause of the accident.

5. Heard Mr.S.Arunkumar, learned counsel for the appellant and Mr.C.S.K.Sathish, learned counsel for the second respondent.

6. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

7. Before the Tribunal, the first respondent / claimant has filed 15 documents which were marked as Exs.P1 to P15 and two witnesses were examined on his side viz., the first respondent / claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the appellant / Insurance company, no document was filed but one witness examined viz., the official of the appellant / Insurance company as RW1.

8.The FIR (Ex.A1) has been registered only against the bus owned by the second respondent / Transport Corporation. The first respondent / claimant has also pleaded in his claim petition filed in MCOP No.106 of 2004 that only due to the rash and negligent driving by the Driver of the bus owned by the second respondent, the accident had happened, which resulted him in sustaining injuries.

9. Even though the Tribunal has narrated the facts and the evidence available on record, which will clearly indicate that it was only the Driver of the bus, who caused the accident. The Tribunal without any basis and without any evidence to the contrary has fixed the contributory negligence of the Driver of the van insured with the appellant / Insurance Company at 50%. The materials and evidence available on record will conclusively establish that it was only the driver of the bus, due to his rash and negligent driving was responsible for the cause of the accident.

10. The learned counsel for the second respondent / Transport Corporation would fairly submit that the appeal filed by the second respondent / Transport Corporation in CMA No.330 of 2010 against the same impugned award was dismissed by this Court on 12.03.2010. A copy of the same has also been placed before this Court.

11. For the foregoing reasons, the finding of the Tribunal that the Driver of the van insured with the appellant / Insurance Company is equally responsible for the cause of the accident has to be necessarily quashed by this Court.

12. In the result, the impugned award dated 28.04.2009 in MCOP No.106 of 2004 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Villupuram passed against the appellant is concerned is hereby set aside and the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

13. In view of the setting aside of the finding of the contributory negligence on the part of the Driver of the vehicle, insured with the appellant / Insurance Company by this Court, the second respondent / Transport Corporation is liable

to pay the entire compensation amount as assessed by the Tribunal under the impugned award.

14. The second respondent / Transport Corporation is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.106 of 2004, on the file of the Motor Accident Claims Tribunal, (I Additional Sub Court, Villupuram) within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent / claimant through RTGS, within a period of two weeks thereafter.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

1.The Motor Accident Claims Tribunal,
I Additional Sub Court, Villupuram.

+lcc to Mr.S.Arun kumar, Advocate, sr no.30378

C.M.A.No.3653 of 2010

PP(CO)

RMP(19/04/2021)

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