

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1780 of 2013 and
M.P.No. 1 of 2013

National Insurance Co., Ltd.,
Cuddalore ... Appellant/3rd respondent
Vs

1. S.Subramaniyan ...1st respondent/Claimant
2. The Managing Director,
Tamil Nadu State Transport Corporation
3/137, Salamedu, Vazhuthareddy,
Villupuram
3. The Managing Director,
PRTC, Iyyanar Koil Street,
Raja Nagar, Pondicherry
...2nd and 3rd Respondent/1st & 2nd respondent

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.A.C.T.O.P.No.887 of 2010 on the file of Motor Accidents Claims Tribunal (I Additional Subordinate Judge) at Cuddalore dated 11.12.2012.

For Appellant : Mr. M.Krishnamoorthy

For Respondent : Mrs.Ramya V. Rao for R1
[R2 and R3 dispensed with
vide Court order dated 20.10.2014]

J U D G M E N T

The appellant herein, who is the Insurance Company, has preferred this Civil Miscellaneous Appeal against the Judgment and Decree made in M.A.C.T.O.P.No.887 of 2010 on the file of Motor Accidents Claims Tribunal (I Additional Subordinate Judge) at Cuddalore dated 11.12.2012.

2. The case of the 1st respondent / claimant is that on 24.03.2010 at about 7.15 a.m., while he was working as duty

driver in the 2nd respondent's vehicle bearing Reg.No.TN-32-N-2442, alighting the passengers at Periyapattu bus stop, Cuddalore-Chidambaram road, the 3rd respondent's vehicle bearing Reg.No.PY-01-AK-2935 came at a very high speed in a rash and negligent manner without making any horn or following traffic rules, hit behind the 2nd respondent's vehicle and caused accident. Due to the accident, the 1st respondent sustained grievous injuries and multiple fractures all over his body and he was immediately taken and admitted in Government Hospital, Cuddalore and till the year 2013, he was taking treatment. The 1st respondent was aged 49 years at the time of accident, he was a healthy person and was earning a sum of Rs.16,000/- per month before the accident. The 1st respondent is the sole bread winner of the family and he spent more money for his treatment and was not able to work and earn as he was before. Therefore, the 1st respondent pleaded for a compensation of Rs.5,00,000/- under various heads with 18% interest p.a.

3. Per contra, the appellant / Insurance Company had filed a counter denying all the averments of the 1st respondent. Further, he contended that the 1st respondent, who is the driver in the 2nd respondent's bus, failed to provide way to the 3rd respondent's bus and due to the same, the 2nd respondent's driver quarrelled with the 3rd respondent's driver and the 1st respondent had chosen to file false complaint by way of influencing the police.

4. Taking note of the pleadings, counter pleadings, the submissions of the respective counsel and the documents marked on either side, the Tribunal has fastened the liability on the 3rd respondent and the appellant being the insurer of the vehicle, was directed to pay the compensation of Rs.51,000/- to the 1st respondent and the same is tabulated below. Challenging the said award, the appellant / Insurance company is before this Court.

S1.	Name of Heads	Amount Awarded by the Tribunal
01	For Permanent disability	Rs.39,000/-
02	Pain and Sufferings	Rs.5,000/-
03	Transport Charges	Rs.1,000/-
04	Medical Expenses	Rs.3,000/-
05	Extra Nourishment	Rs.3,000/-
TOTAL		Rs.51,000/-

5. The learned counsel for the appellant contended that the award passed by the Tribunal is contrary to law, weight of evidence and probabilities. Further, the Tribunal ought to have dismissed the claim petition as against the appellant and the 3rd respondent, as the bus insured with the appellant and owned by the 3rd respondent was not involved in the alleged accident. Also, the Tribunal had not appreciated the evidence of R.W.1, the driver of the insured bus, who had categorically deposed that the bus driven by him was not at all involved in the accident and a complaint was lodged belatedly against him.

6. The learned counsel for the appellant also submits that the Tribunal overlooked the fact that as per Exs.P.2 and P.3, the Motor Vehicle Inspector's reports of the buses, the bus driven by the claimant had extensive damages, whereas, the bus insured with the appellant had no damage at all. Moreover, the Tribunal erred in not considering the fact that the bus driven by the claimant was subjected to inspection on 16.04.2010 for the accident dated 24.03.2010 and the bus insured with the appellant was inspected on 30.03.2010. Also, no independent witness or the police officer was examined to prove the involvement of the bus insured with the appellant in the alleged accident. Hence, he pleaded to set aside the impugned award passed by the Tribunal.

7. The learned counsel for the 1st respondent contended that the compensation awarded by the Tribunal is a just and fair compensation, hence pleaded to dismiss the appeal filed by the Insurance Company.

8. Earlier, this Court had dispensed with the Notice to the respondents 2 and 3 vide order dated 20.10.2014.

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

10. On the perusal of Ex.P.1, FIR, it is clear that the same has been registered against one Antonysamy @ Sanjeevi, who is the driver of the 3rd respondent's bus. Further, the 3rd respondent has examined one witness as R.W.1, who had stated that 'on 24.03.2010 at about 6.00 clock, when he had driven the bus bearing regn. No.PY 01AK 2935, at that time, near Periyapet, the driver of the 2nd respondent's bus had driven the said bus close by and on account of the same, there was a wordy quarrel between them. Thereafter, the driver of the 2nd respondent had stopped their bus at Periyapet Bus stop and had discussion with their persons and that driver of the bus of the 3rd respondent had taken

his bus to Karaikkal'.

11. It is seen from Ex.R.1, which is the letter written by the 3rd respondent's driver, viz., Antonysamy @ Sanjeevi dated 24.03.2010, wherein it is pointed out by the driver himself to the General Manager, Puducherry Transport Corporation, Puducherry that 'on 24.03.2010 at morning, 6.00 clock, he had driven the bus bearing Regn.No.PY 01 A.K. 2935 while nearing Periyapattu, another vehicle bearing Reg.No.TN-32-N-2442 was driven by the 1st respondent, when they were trying to overtake each other, there were altercations between them and the said driver of the other vehicle, viz., 1st respondent was trying to take the vehicle front and back in order to damage the vehicle of the Pondicherry Transport Corporation bus, at that point of time, he cleverly without even getting any scratch, managed to get the vehicle out from the said place. But the driver of the 2nd respondent-bus immediately joining with many persons had given a false complaint against him. It is further stated in the letter that the fault was on the Periyar Transport Vehicle's driver and for the mistake done by the driver of the vehicle, we should not let him to live in this world, what to do, the entire village people and advocate are with him and Central Minister is a relative to him and hence FIR has been registered against us. It is also stated that without any damage to the bus as well as to the passengers, he had cleverly brought the vehicle from the said incident'.

12. Also at the backside of the said letter, it is written further as note that 'RTO hpnggh;;l;oy; ve;j tpjkhdekJ tz;oapy; rpwpa bgapz;L Tl nja;khd ,y;iy bad;W hpg;nggh;;l; th';fp gh;f;ft[k;/ 'The driver of the 2nd respondent-bus brought many people to the police station and he has threatened with dire consequences and further, he has stated that he has left everything to God.' The said letter is signed on 24.03.2010 and the Motor Vehicles Report submitted by the 2nd respondent and 3rd respondent are Ex.P.2 dated 16.04.2010 and Ex.P.3 dated 30.03.2010 respectively. The date, time and place of inspection of the 3rd respondent / Puducherry bus bearing Reg.No.PY01AK-2935/HPV/8/C is on 30.03.2010 at 5.45 hrs and damage is stated as Nil. Further, the date, time and place of inspection of the 2nd respondent / Tamilnadu bus bearing Reg.No. TN 32 N 2442 is on 16.04.2010 at 14.40 hrs, wherein it is stated that 'RHS rear body sheet torn off for a length of 30 and all the rear 3 sheets got scratches. From RHS quarter glass was broke.'

13. Therefore, it is clear from the perusal of the said letter and also from the Motor Vehicle Inspectors report that there has been some manipulations in the records.

Further, when the driver of the 3rd respondent bus had admitted in the cross examination that when he tried to overtake the bus belonging to the 2nd respondent-bus, the accident had happened, that being the case, mere contention of the appellant that the bus insured with the appellant was not involved in the accident, cannot be accepted. Also, the contention of the appellant that as per Exs.P.2 and P.3, the bus driven by the 1st respondent had extensive damages, whereas, the bus insured with the appellant had no damage at all, thereby the appellant is not liable to pay compensation, cannot be accepted because of the reason that as per Ex.R2, letter written by 3rd respondent's driver, it is clear that when the 3rd respondent's driver tried to overtake another bus, at that time, the accident had happened. Moreover, the contention of the appellant that due to some altercations, belatedly, the complaint was lodged cannot be accepted, due to the fact that the date of accident is on 24.03.2010 and the complaint was lodged on the same day, viz., 24.03.2010.

In view of all the above said reasonings, this Court is not inclined to interfere with the award passed by the Motor Accident Claims Tribunal at Cuddalore (1st Additional Subordinate Judge) in M.C.O.P.No.887 of 2010 dated 11.12.2012 and the same is confirmed. The appellant / Insurance company is directed to deposit the amount awarded by the Tribunal, viz., Rs.51,000/- to the credit of M.C.O.P.No.887 of 2010 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit being made, the 1st respondent / claimant is directed to withdraw the said amount by filing formal petition before the Tribunal. Accordingly, the present appeal filed by the Insurance company is dismissed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Motor Accidents Claims Tribunal
(I Additional Subordinate Judge), Cuddalore
2. The Section Officer,
VR Section,
Madras High Court, Chennai

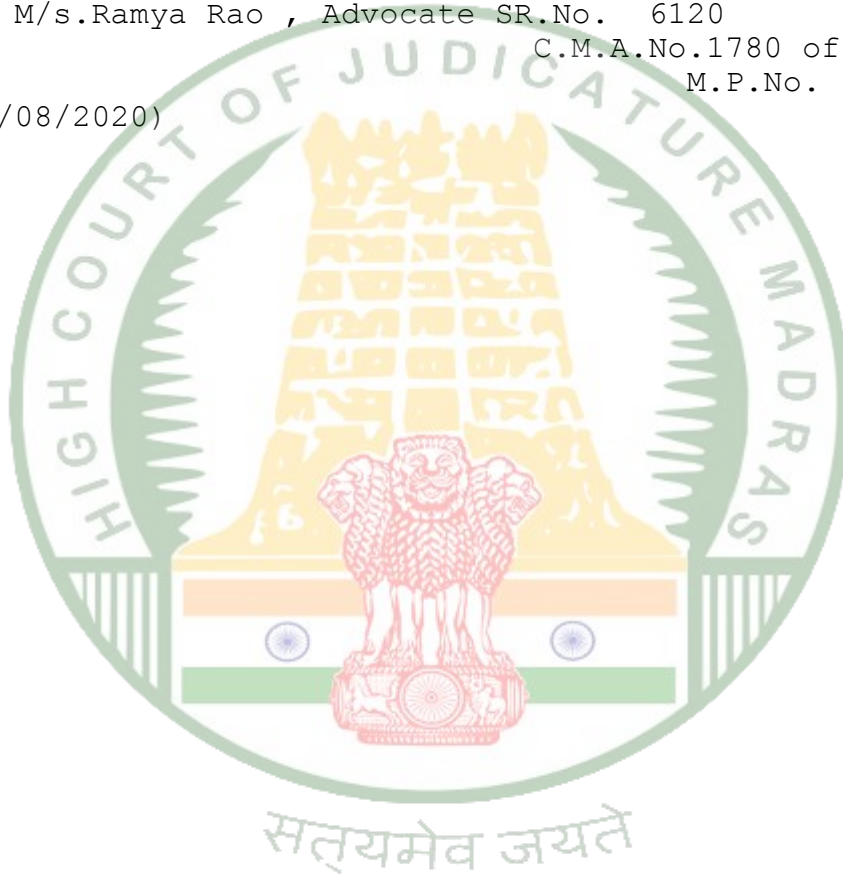
+lcc to Mr.M.Krishna moorthy , Advocate SR.No. 6312

+lcc to M/s.Ramya Rao , Advocate SR.No. 6120

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A.SK(21/08/2020)



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