

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	07.08.2020
Pronounced On	01.09.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2038 of 2013
and
M.P.No.1 of 2013
(Through Video Conferencing)

New India Assurance Company Ltd.,
Srivari Complex, Second Floor,
Near A.R.R.S. Theatre,
New Bus Stand, Meyyanoor,
Salem - 636 004.

... Appellant/2nd Respondent

Vs.

1.Ayyavoo

...1st Respondent/Petitioner

2.Correspondent,

Muthayammal Arts and Science College,
Kakkaveri, Rasipuram Taluk,
Namakkal District.

...2nd Respondent/1st Respondent

(2nd Respondent set exparte in the Lower Court,
Hence Notice is dispense with)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree dated 16.11.2012 passed in M.C.O.P.No.339 of 2011 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Namakkal.

For Appellant : Mrs.G.Sukumari

For R1 : M/s.Revathi Vedagiri
for Mr.R.Nalliyappan.

For R2 : Dispense with.

J U D G M E N T

The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 16.11.2012 passed by the Motor Accident Claims Tribunal (Additional District Judge), Namakkal in M.C.O.P.No.339 of 2011.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,10,000/- as compensation together with interest at 7.5% per annum from the date of the claim petition till the date of deposit, to the 1st respondent/claimant under the following heads:-

Heads	Amount
Injury	Rs. 13,000/-
Loss of income	Rs. 37,000/-
Transport expenses	Rs. 3,000/-
Extra Nourishment	Rs. 30,000/-
Medical Bills	Rs. 27,000/-
Pain and Sufferings	Rs. 35,000/-
Disability	Rs. 50,000/-
Loss of earning capacity	Rs.1,15,000/-
Total	Rs.3,10,000/-

3. The case of the appellant Insurance Company is that the 1st respondent/claimant was riding a TVS XL bearing registration No.TN-28-AZ-6070 on the Attur to Rasipuram Main Road, Anjaneyar Kovil, near Kannimar Uththu without following road traffic rules and regulations and unmindfully, carelessly and in a rash and negligent manner and tried to overtake a lorry which was proceeding in the same direction ahead of him, when the insured College Bus coming from the opposite direction on the extreme left side of the road met with an altogether avoidable accident and was hit by the insured college bus.

4. It was submitted that the 1st respondent/claimant has made a false complaint as if the accident was due to the carelessness of the driver of the said College Bus. It is therefore submitted that as a tortfeasor, he was not entitled for compensation. Apart from the above, the appellant Insurance Company has also disputed the age of the 1st respondent/ claimant and the income of the 1st respondent/claimant of Rs.7,000/- per month before the Tribunal.

5. It is stated that having accepted that the 1st respondent himself rode the two wheeler in a rash and negligent manner and was unable to control the same and hit against the insured College Bus coming from the opposite direction, the Tribunal erred in awarding the aforesaid compensation. It is further submitted that the 1st respondent/claimant did not file the accident sketch. It is submitted that as per the Motor Vehicles

Inspector's report, the negligence was on the part of the 1st respondent/claimant is evident. It is further submitted that the Tribunal ought to have looked into the FIR before coming to the conclusion that the owner of the insured bus was vicariously liable to compensation for the accident.

6. It is submitted that the amount of Rs.37,000/- towards loss of income and Rs.30,000/- towards extra nourishment and Rs.35,000/- towards pain and sufferings and Rs.1,15,000/- towards loss of earning awarded by the Tribunal are all on higher side. Therefore, he prayed for setting aside the impugned Judgment and Decree.

7. Per contra, the learned counsel for the 1st respondent/claimant submitted that the impugned Judgment and Decree was well reasoned and requires no interference.

8. I have considered the arguments advanced by the learned counsels for the appellant and the 1st respondent/claimant. I have also perused the evidence on record.

9. The Tribunal has considered the exhibits marked on behalf of the appellant Insurance Company which is the policy copy and the charge sheet (Exhibits R1 and R2). As far as the 1st respondent/claimant is concerned, he had marked about 11 documents, which are reproduced below:-

- i. Ex.P1 - 27.01.2010 - Certified copy of the FIR.
- ii. Ex.P2 - 27.01.2010 - Certified copy of the Information of Accident.
- iii. Ex.P3 - 27.01.2010 - Certified copy of Accident Register.
- iv. Ex.P4 - 28.01.2010 - Certified copy of Wound Certificate.
- v. Ex.P5 - 11.02.2010 - Certified copy of report of the Motor Vehicle Inspector.
- vi. Ex.P6 - 27.01.2010 - Certified copy of report of the Motor Vehicle Inspector.
- vii. Ex.P7 - 08.02.2010 - Discharge Summary.
- viii. Ex.P8 - -- - Medical Bills.
- ix. Ex.P9 - -- - X-Rays (5).
- x. Ex.P10 - -- - X-Ray.
- xi. Ex.P11 - 08.10.2012 - Disability Certificate.

10. The Tribunal has come to a conclusion that the accident has taken place due to rash and negligent driving of the insured bus belonging to the 2nd respondent college represented by its correspondent. The 2nd respondent however had not filed any counter to deny the allegation of the 1st respondent/claimant before the Tribunal.

11. The fact regarding the accident and the nature of injury is not in dispute. It is case of the 1st respondent/claimant that he was riding his TVS XL on the extreme left side of the road while the case of the appellant Insurance Company is that the 1st respondent/claimant had tried to overtake a lorry in front of him and had met with an accident by dashing the TVS XL against the bus coming from the opposite direction.

12. In this connection, a reference was made to content the Ex.R1 and Ex.R2. As per which, there are indications to suggest that the 1st respondent/claimant was negligent.

13. However, the content of FIR is not sufficient to disprove the case involving in the motor accident particularly where the bigger bus is involved on high ways. If the appellant Insurance Company wanted to distance itself from liability, it ought to have produced the driver of the college bus as an eyewitness and subjected him to cross examination to substantiate the defence taken by it. In the process, the 1st respondent/appellant would have got an opportunity to contradict the oral evidence before the Tribunal for the Tribunal to come to a fair conclusion on the facts of the case. This has not been done.

14. There is also no allegation of collusion between the 1st respondent/claimant and the 2nd respondent. Considering the same, I am of the view that the reason given in the impugned Judgment and Decree though the skewed, is to be upheld. Therefore, this Civil Miscellaneous Appeal is liable to be dismissed in the light of the above observations.

15. Therefore, the appellant Insurance Company is directed to deposit the entire amount of compensation awarded by the Tribunal together with interest and costs as directed by the Tribunal, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

16. On such deposit, the 1st respondent/claimant is permitted to withdraw the same together with interest and cost, less any amount already withdrawn, by filing suitable application before the Tribunal.

17. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

The Motor Accident Claims Tribunal,
(Additional District Judge), Namakkal.

C.M.A.No.2038 of 2013
and M.P.No.1 of 2013

NRJK(CO)
CB(21/04/2021)