

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.593 of 2012

and

M.P.No.1 of 2012

The Oriental Insurance Co. Ltd.,
Bangalore Branch, Divisional Office,
Sarada College Main Road, Salem ... Appellant

Vs.

1. Tamil Nadu State Transport Corporation,
Rep. by its Managing Director,
No.12, Ramakrishna road, Salem.

2. P. Annadurai ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and Judgment passed by the Motor Accidents Claims Tribunal, Salem (Additional District Judge, Fast Track Court No.2, Salem) in MCOP No.651/2004 dated 22.12.2005.

For Appellant : Mr.M. Rajasekar

For Respondent-1 : Mr. P. Jagadeeswaran - No appearance

For Respondent-2 : Served, name printed (No appearance)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company to set aside the decree and Judgment passed by the Motor Accidents Claims Tribunal, Salem, Additional District Judge, Fast Track Court No.II, Salem.

2.The appellant is the Insurance Company. The first respondent is owner of the bus and the second respondent is the owner of lorry.

3.The case of the appellant is that on 03.04.1998 at about 6:45 p.m when the first respondent bus bearing Registration No.TN-27-N-0696 was proceeding from Namakkal to Karur, a lorry bearing Registration No:CAM-3622 came in the opposite direction and dashed against the bus. Due to the impact the bus was damaged. Hence, the first respondent/Transport Corporation filed a claim petition before the Tribunal seeking Rs.23,914/- as compensation.

4.The Tribunal considering the pleadings, oral and documentary evidence awarded Rs.17,761/- as compensation and directed the owner and insurer of the alleged vehicle involved in the accident are jointly and severally liable to pay the compensation amount.

5.Challenging the award passed by the Tribunal, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant would contend that as per Ex.B1 policy, the maximum liability of the appellant is restricted to Rs.6,000/- towards the damages to the spare parts and not to the vehicle and hence the Tribunal ought not to have awarded a sum of Rs.17,761/- as compensation.

7.Per contra, the learned counsel appearing for the first respondent/Transport Corporation would contend that the learned Judge before the Tribunal has considered each and every aspect and awarded a reasonable compensation. Hence, prays for dismissal of this appeal.

8.Despite serving notice and names printed in the cause list, there is no representation for the first respondent. Hence, considering the paucity of time the main appeal itself is taken up for final disposal, since the disposal of the case will not affect the first respondent in any manner.

9. Heard both sides and also perused all the materials available on record.

10.Before the Tribunal on the side of the appellant two witnesses were examined viz., P.W.1 and P.W.2 and marked 6 documents Exs.P.1 to Ex.P.6. On the side of the respondent one witnesses were marked viz., R.W.1 and marked six documents viz., Ex.R.1 to Ex.R.6.

11.On a perusal of the impugned award it reveals that the Tribunal has awarded Rs.17,761/- as compensation to sustain the damages made to the bus. Once again evaluating the vital evidence to this issue i.e the Insurance policy and on a fair

reading of the said policy it is seen that in some cases the Insurance company can enhance its liability in some situation and the relevant portion is extracted hereunder:

Increase in the limits of liability of proper damage:

In consideration of payment of additional premium Rs....it is hereby declared and agreed that the limit of liability of the policy under Section 147(2)(b) of the Motor Vehicles Act, 1988 in respect of damage to any property of the third party is increased from Rs.6,000/- to Rs.... only in respect of property other than property belonging to the insured or held in trust or in the custody or control of the insured.

12. In view of the above, it is clear that the Insurance Company while issuing policy copy to the policy holders, it must fill all the mandatory columns, which is not done in the case. Any individual or any organisation make signature in the said policy copy, with an intention that it covers their future requirements. This act of Insurance Company is not fair. It is also bonded duty of the Officials of the Insurance Company to make the policy holders aware about the policy terms viz., what types of risks are covered and to what extent, which is not done in this case.

13. It is also seen from records that the amount awarded by the Tribunal was Rs.17,761/- in the year 2004. We are now after a lapse of 16 years and the date of accident is on 03.04.1998. If the total amount including the interest portion is calculated from the date of petition the total amount comes around to Rs.39,089/- (Rs.17,761 + Rs.21,328) which is calculated hereunder:

Award Amount : Rs.17,761/-

Interest 7.5% : $7.5/100 \times 17,761 = \text{Rs.}1332.075$
(for one year) rounded off to Rs.1333/-

From the date of petition: Rs.1333 x 16 = Rs.21,328/-
(16 years)

This being the factum of the case, this Court is of the view that this appeal filed by the Insurance Company is not in any way justifiable and valid and liable to be dismissed.

14. In view of the above, this Court is inclined to dismiss this petition as there was no valid grounds to allow this petition, in one way or other.

15.In the result this appeal is dismissed and the appellant/Insurance Company is directed to deposit the amount awarded by the Tribunal at the rate of 7.5% per annum from the date of petition till the date of realization, after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made the first respondent/Transport Corporation is permitted to withdraw the same, after deducting the amount already withdrawn, if any, on making proper application before the Tribunal. No Costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
Additional District Judge,
Fast Track Court No.2, Salem.

2. The Section Officer, VR Section,
High Court, Madras.

1 cc to Mr.M.Rjasekar, Advocate, Sr. 18110

C.M.A.No.593 of 2012
and
M.P.No.1 of 2012

SSV (CO)
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