

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.3373 of 2013 & 591 of 2014

New India Insurance Company Ltd.,
Rep. by its Manager
Branch Office, Bye Pass Road,
Dharmapuri

..Appellant
(in Both CMAs)

Versus

Silambarasan S/o.
Chinnasamy

...1st respondent
(in CMA No.3373 of 2013)

B. Rajagopal S/o. Belathappan

...1st respondent
(in CMA No.591 of 2014)

2.Mrs. Soodamani W/o. Shanmugam
(The 2nd respondent was set
ex-parte before the Tribunal)

...2nd Respondent
(in Both C.M.As)

Common Prayer: Civil Miscellaneous Appeals filed against the
order and decree dated 26.07.2012 made in M.C.O.P.Nos.776 of
2010 and 778 of 2010 respectively on the file of the Motor
Accident Claims Tribunal, Additional District Judge,
Dharmapuri.

For Appellant : Mr.R. Sivakumar
(both CMAs)

For Respondent-1 : Mr.M.Selvam
(both CMAs)

R2 - Ex-parte
(In both C.M.As)

C O M M O N J U D G M E N T

The Insurance company has preferred these appeals against
the award and decree passed in favour of the claimants in
M.C.O.P Nos.776 of 2010 and 778 of 2010 respectively on the

file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri, in result of the road accident.

2. The 1st respondent herein in both appeals who are claimants before the Tribunal, were awarded compensation each. The Insurance Company who is the 2nd respondent before the Tribunal, was made liability on it. Since both appeals arise out of same accident, they are disposed of by this common Judgment. For the convenience, the parties are referred to the same ranking as before the Tribunal.

3. The brief facts of the case are as follows:

That on 23.10.2010, while the petitioner namely, B. Rajagopal, in M.C.O.P. No.778 of 2010 was riding the Hero Honda Splendor Motor Cycle bearing Registration No.TN 29 AC 9427 along with the another petitioner, namely, Mr. Silambarasan, in M.C.O.P. No.776 of 2010 as pillion rider from Dharmapuri to Nallampalli. On the way, Dharmapuri to Salem Highway road at opposite Pachamuthu Matric School at about 2.15 a.m. at the time, the bus TN.63-L-6667 belonging to the 1st respondent having driven in rash and negligent manner dashed against the vehicle ridden by petitioners. Due to the impact of the accident, the both petitioners sustained grievous injuries and were admitted in the Hospital and treated therein. In view of the road accident, the both petitioners had filed a separate claim petitions as aforesaid wherein both were awarded compensation after trail. Being aggrieved by the award passed in favour of the petitioners, the Insurance company/appellant herein in both appeals has filed the appeals questioning the liability on it and the quantum of the compensation awarded to the petitioners, before this Court.

4. The learned counsel for the Insurance Company/appellant herein would submit that the accident happened only due to the rash and negligent driving of the rider of Motor Cycle bearing Registration No.TN 29 AC 9427. There is no negligence on the part of the bus driver. The bus bearing registration No.TN 63 L 6667 was parked in front of the Patchamuthu Matric School towards face in south direction and rider of the two wheeler driving it rash and negligent manner dashed against the Four wheeler. The bus bearing registration No.TN 63 L 6667 no way connected to the accident and the petitioners sustained simple injuries. Hence, the claim petitions of both petitioners are contrary to the facts and law and liable to be set aside.

5. The learned counsel for the 1st respondent in both petitions would submit that the Tribunal has awarded compensation after considering the oral and documentary evidence let in by both parties. In order to prove the case on our side before the Tribunal, witnesses P.W.1 to P.W.4 were

examined and Ex.A1 to Ex.A18 were marked. The Ex.A1, FIR and Ex.A9, Charge Sheet, were filed against the driver of the bus bearing registration No.TN 63 L 6667 for offences U/s.279,337 of IPC wherein it is clearly stated that manner of the accident charging the driver of the Bus. Further, Ex.A10, Certificate copy of the Criminal Court in STC 579/2010 shows that as the driver of the bus admitted the offence, a fine was imposed on him. In these circumstances, without any doubt, the Tribunal has come to the conclusion, the road accident happened only due to the rash and negligent driving of the driver of the bus bearing registration No.TN 63 L 6667. Accordingly, the petitioners were awarded the compensation considering the facts and circumstances of the case and permanent disability of the petitioners. Hence, this Court may be pleased to confirm the award passed by the Tribunal in both claim petitions.

6. Heard, the learned counsel appearing for the Insurance Company/appellant herein and the learned counsel appearing for the 1st respondent in both appeals as well as perused the materials available on record. The Second respondent in both appeals has remained absent before the Tribunal as well as before this Court.

6.On perusal of the award, it is seen that the driver of the bus admitted his offence before the Criminal Court in STC 579/2010 and thereby he was imposed fine by the Criminal Court for the road accident. Further, the Tribunal has corroborated the evidence of P.Ws.1 in both claim petitions, who are rider and pillion rider, along with Ex.A1, F.I.R. and Ex.A9, Charge sheet, thereafter, it held that the road accident happened due to rash and negligent driving of the Bus driver. Hence, the factum of the accident and the manner of the accident has to be rash and negligence of the driver of the bus driver under Section 163A is not in dispute. As far as the quantum of the compensation awarded by the Tribunal is concerned, this Court is of the considered view that the Tribunal has awarded compensation of Rs.1,88,480/- and Rs.3,19,595/- to the petitioner in M.C.O.P. No.776 of 2010 and to the petitioner in M.C.O.P. No.778 of 2010 respectively after thoroughly considering the oral and documentary evidence as per the law. Hence, this Court is not inclined to interfere with the quantum of the award passed by the Tribunal. Therefore, the award passed in both claim petitions in M.C.O.P. No.776 of 2010 and M.C.O.P. No.778 of 2010 are hereby confirmed.

7. The Insurance company/appellant herein in both appeals is directed to deposit the award amount as awarded by the Tribunal to the Credit of the M.C.O.P. No.776 of 2010 and M.C.O.P. No.778 of 2010 along with interest @7.5% p.a. from the date of petition, within a period of three weeks from the date of receipt of copy of this Judgment.

8. The petitioners/Claimants in M.C.O.P. No.776 of 2010 and M.C.O.P. No.778 of 2010 are entitled to withdraw their respective award amount as awarded by the Tribunal by filing a formal petition before the concerned Tribunal.

9. In the result, the appeals in C.M.A. No.3373 of 2013 and C.M.A.591 of 2014 are dismissed and the Award passed by the Tribunal in M.C.O.P. No.776 of 2010 and M.C.O.P. No.778 of 2010 are confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

lbm

To:

1.The Motor Accident Claims Tribunal,
Additional District Judge, Dharmapuri.

Copy To:

2.The Section Officer,
V.R.Section, High Court, Madras-600 104.

+1cc to M/s.R.Sivakumar, Advocate SR.11081

C.M.A.Nos.3373 of 2013 & 591 of 2014

VSN II (CO)
CB(29/01/2021)

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