

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.956 of 2013
and
MP.No.1 of 2013

The Branch Manager,
New India Assurance Company Limited,
Branch Office,
Bye Pass Road,
Hosur Town.

... Appellant/3rd
Respondent

vs.

K.G.Gunasekaran
2.P.Murugesan
3.National Insurance Co. Ltd.,
Bangalore Road,
Krishnagiri.

... Respondents/Petitioner &
Respondents 1 & 2

(R3 is not necessary party in this proceedings, hence given up)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 17.12.2004 in M.C.O.P.No.1196 of 1994 on the file of the Motor Accident Claims Tribunal (I Additional District Court), Dharmapuri.

For Appellant : Mr.G.Muniratnam

For Respondents: R1 - served, name printed -
No appearance
R2 - Not ready notice
R3 - given up

J U D G M E N T

The New India Assurance Company, the third respondent in MCOP.No. 1196 of 1994 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Dharmapuri has filed the present appeal questioning the liability and quantum of

compensation awarded by the Tribunal.

2. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,000/- for the injuries sustained by him in a road accident that took place on 03.09.1992.

3. The case of the first respondent / claimant is that on 03.09.1992, at about 01.30 pm, he was standing along with his relations in between Sakkilinatham and Byanur road and at that time, a mini lorry bearing Registration No.TAE 1229 belonging to the second respondent and insured with the present appellant, driven by its driver in a rash and negligent manner, hit them, as a result of which, they all sustained grievous injuries. According to the first respondent / claimant, the rash and negligent driving of the driver of the mini lorry belonging to the second respondent was the cause of the accident. Therefore, he filed MCOP.No.1196 of 1994 seeking compensation of Rs.15,000/- for the injuries sustained by him.

4. The learned I Additional District Judge / Motor Accident Claims Tribunal, Dharmapuri after analysing the documents and evidences on record, awarded a compensation of Rs.9,800/- together with interest at the rate of 9% per annum to the first respondent / claimant. Challenging the said award dated 17.12.2004 made in M.C.O.P.No.1196 of 1994, granting compensation to the first respondent / claimant, the appellant / Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act.

5. The learned counsel appearing for the appellant / Insurance Company contended that the Tribunal failed to consider the counter statement and additional counter statement filed by them before the Tribunal, wherein, the appellant / Insurance Company has clearly stated that the accident took place due to a mechanical defect in the mini lorry. He also relied on the First Information Report (Ex.A1) and submitted that the accident took place only when the first respondent / claimant along with his relations were travelling as unauthorised passengers in the mini lorry. Therefore, he would contend that since the first respondent / claimant travelled as an unauthorised passenger, the Tribunal ought to have rejected the claim petition. He prayed for allowing this appeal.

6. Heard the learned counsel appearing for the appellant / Insurance Company and perused the materials available on record.

7. Eventhough it is contended by the appellant / Insurance Company that the accident happened due to a mechanical error in the mini lorry bearing Registration No.TAE 1229, they have not

adduced any documentary evidence to prove their case. Under such circumstances, the contention that the accident happened only due to mechanical error is not acceptable. Another contention made by the appellant / Insurance Company is that the first respondent / claimant has travelled as an unauthorised passenger in the mini lorry. The Tribunal has discussed this aspect in detail and came to a conclusion that the concerned Police Officer who registered the First Information Report (Ex.A1) was not examined to prove that the first respondent / claimant was travelling in the mini lorry as an unauthorised passenger. In the absence of any evidence on the side of the appellant / Insurance company, this Court is of the opinion that, the Tribunal was right in fixing the liability on the appellant / Insurance Company.

8. As far as the quantum of compensation is concerned, the first respondent / claimant has sustained three simple injuries. In the claim petition, it is stated that he was a self employee doing cloth business, earning a sum of Rs.1,500/- per month. The Tribunal also fixed the same as his monthly income and awarded a sum of Rs.600/- towards 'loss of income' for 10 days. Since he has sustained three injuries that are simple in nature, the Tribunal awarded a sum of Rs.9,000/- towards 'pain and sufferings'. Other heads awarded by the Tribunal cannot also be said to be excessive. Therefore, this Court is of the considered opinion that, the Tribunal has fairly considered the injuries sustained and awarded a compensation of Rs.9,800/- to the first respondent / claimant and the same does not warrant any interference by this Court.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

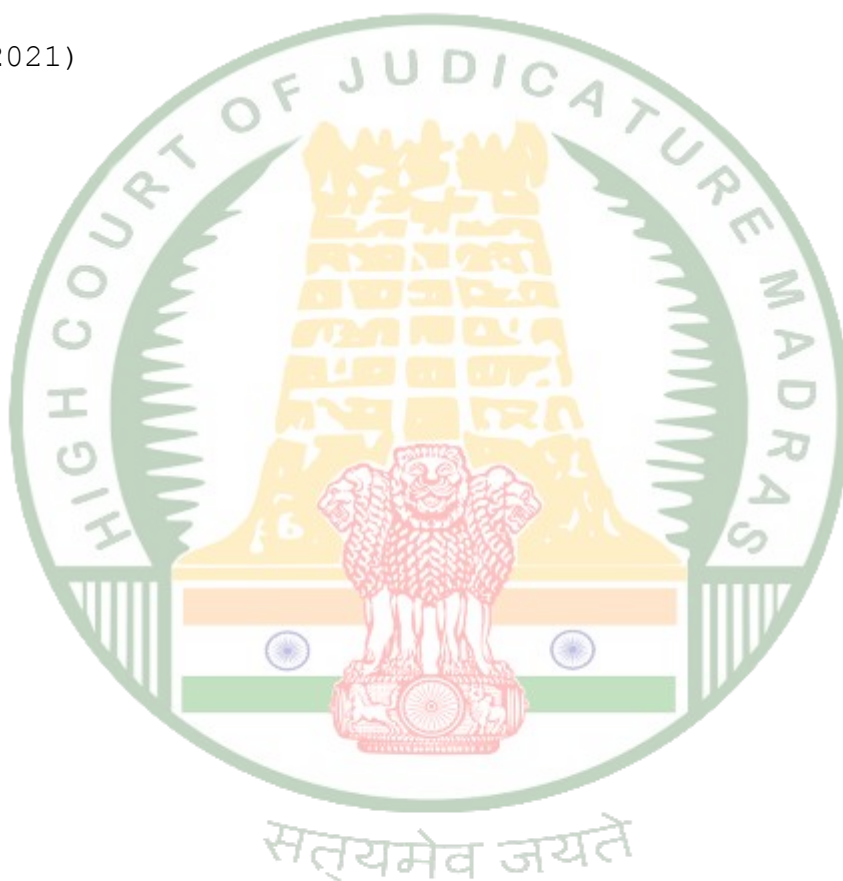
The Motor Accidents Claims Tribunal,
I Additional District Court,
Dharmapuri.

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.G.Munirathnam, Advocate, S.R.No.13324

C.M.A.No.956 of 2013
and
MP.No.1 of 2013

PA (CO)
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