

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2190 of 2014

and

M.P.No.1 of 2014

The Branch Manager,
Oriental Insurance Company Limited,
Branch Office, No.3L - Sidhaveerappa Chetty Street,
Dharmapuri - 636 701. ... Appellant/2nd Respondent

Vs.

1.Rajamanickam
2.T.Rajeswari ... Respondents/Petitioner/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.04.2014 made in M.C.O.P.No.2471 of 2013 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.K.Vinod for
Ms.Elveera Ravindran

For R1 : Mr.K.Prasanna for
Mr.Mukund R.Pandiyar

For R2 : Given up

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 11.04.2014 made in M.C.O.P.No.2471 of 2013 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

2. The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.2471 of 2013 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. The 1st respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.12.2007.

3. According to the 1st respondent, on the date of accident i.e., on 18.12.2007, while the 1st respondent was travelling in a Tata 407 vehicle bearing Registration No.KL 07 W 4896 towards Chennai from Anagodi Village with 25 numbers of brinjal bags as owner of the goods, the driver of the said vehicle drove the same in a rash and negligent manner. When the said vehicle was proceeding near Chitheri Medu in Bangalore to Chennai N.H. Road the rear left side tyre of the said vehicle burst and due to that the vehicle lost control of the driver and capsized on the center median side. Due to the said impact, the 1st respondent sustained multiple injuries all over the body. Therefore, the 1st respondent filed the above claim petition claiming compensation as against the appellant and 2nd respondent.

4.The 2nd respondent/owner of the vehicle remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and submitted that the accident has occurred due to rash and negligent driving by the driver of the Tempo. In fact the accident has occurred only due to non-maintenance of the vehicle by the 2nd respondent/owner of the Tempo. The vehicle was not in fit condition to fly on the road on the date of the accident. The 1st respondent was travelling as an unauthorized passenger, which is in violation of policy conditions. Hence, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, one Dr.M.Devendran was examined as P.W.2 and marked five documents as Exs.P1 to P5. On the side of the appellant/Insurance Company, one Uma/Officer of the Insurance Company was examined as R.W.1 and marked one document as Ex.R1.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tempo belonging to the 2nd respondent and directed the appellant/Insurance Company, being insurer of the said Tempo, to pay a sum of Rs.4,12,800/- as compensation to the 1st respondent at the first instance and then recover the same from the 2nd respondent/owner of the vehicle.

8.Against the said award dated 11.04.2014 made in M.C.O.P.No.2471 of 2013, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in holding that the 1st respondent travelled as owner along with goods. The 1st respondent did not travel in the cabin but he travelled in the top of the Brinjal bags. The Tribunal ought to have held that the 1st respondent travelled only as an unauthorized passenger and ought to have exonerated the appellant/Insurance Company from its liability. The Tribunal having held that the driver of the vehicle did not possess valid driving license, ought to have exonerated the appellant fully instead of ordering pay and recovery. The accident occurred in the year 2007. The 1st respondent has taken treatment in the year 2007 but the disability certificate was issued in the year 2013. The Tribunal erred in holding that the 1st respondent suffered 35% disability. The Doctor did not assess the disability for the whole body. In the absence of proof of loss of earning capacity, the Tribunal erred in applying multiplier method and awarded excessive amount as compensation. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the accident has occurred only due to rash and negligent driving by the driver of the Tempo belonging to the 2nd respondent. The Tribunal after considering all the materials available on record in proper perspective, has awarded compensation, which is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant/Insurance Company as well as learned counsel appearing for the 1st respondent and perused the materials available on record.

12.It is the contention of the 1st respondent that on the date of accident i.e., on 18.12.2007, he travelled in the offending vehicle along with his vegetables as owner of the goods. Due to rash and negligent driving by the driver of the vehicle belonging to the 2nd respondent, the tyre burst and vehicle got capsized on the centre median side. According to the 1st respondent, the accident has occurred due to negligent driving by the driver of the vehicle. To substantiate the said contention, the 1st respondent examined himself as PW1 and deposed to that effect and marked Ex.P1/FIR which was registered against the driver of the vehicle belonging to the 2nd respondent. On the other hand, it is the contention of the appellant that the accident has occurred due to non-maintenance

of the vehicle properly and therefore, the appellant is not liable to pay compensation. To substantiate the said contention, the appellant has not let in any evidence. The Motor Vehicles Inspector's Report was also not filed either by 1st respondent or the appellant. The Tribunal considering the evidence of the 1st respondent as PW1, contents of FIR and in the absence of any contra evidence by the appellant held that the accident has occurred due to rash and negligent driving by the driver of the vehicle belonging to the 2nd respondent. There is no error in the finding of the Tribunal.

13. It is the contention of the appellant that at the time of accident, the 1st respondent travelled only as an unauthorized passenger and not as owner of the goods. It is further contended that the 1st respondent did not travel in the cabin but travelled on the top of the Brinjal bags and therefore, the appellant is not liable to pay compensation. This contention is contrary to the evidence let in by the appellant by examining RW1/officer of the appellant. RW1 deposed that the 1st respondent travelled along with the goods as the owner of the goods. RW1 did not depose as to whether the 1st respondent travelled in the cabin or on the top of the Brinjal bags. The Tribunal considering the evidence of the 1st respondent as PW1, contents of FIR and the evidence of RW1 held that the 1st respondent travelled only as owner of the goods along with his goods. The Tribunal has given valid reason for the said finding. There is no error in the said finding warranting interference by this Court.

14. As far as quantum of compensation is concerned, the Tribunal considering the treatment records, disability certificate and evidence of PW2/Doctor held that the 1st respondent suffered 35% functional disability. The 1st respondent has not produced any document to show that he has spent a sum of Rs.1,00,000/- towards medical expenses and he require further amount towards future medical expenses. The 1st respondent has also not stated the period of treatment taken by him. In view of the failure on the part of the 1st respondent to prove the medical expenses and the treatment taken, a sum of Rs.1,00,000/- awarded by the Tribunal towards medical expenses and incidental charges are set aside. It is not disputed by the appellant that the 1st respondent suffered injuries in the accident. The 1st respondent would have taken treatment and he would have spent some amount towards medical expenses. Hence, a sum of Rs.30,000/- is awarded towards medical expenses. The 1st respondent has not filed any document to prove that he suffered functional disability. In the absence of any evidence, the Tribunal erred in holding that the 1st respondent suffered

functional disability and applied multiplier method and granted compensation. The amount granted by the Tribunal by applying the multiplier method towards loss of earning capacity is set aside. The 1st respondent is entitled to compensation by adopting percentage method. PW2/Doctor assessed the disability of the 1st respondent as 40%. Hence, the 1st respondent is entitled to Rs.1,20,000/- (Rs.3,000/- x 40%) towards disability at the rate of Rs.3,000/- per percentage. According to the 1st respondent at the time of the accident he was aged 55 years and was earning a sum of Rs.10,000/- per month by doing agricultural work and seasonal vegetable business. The 1st respondent has not filed any document to substantiate the same. In the absence of any material evidence with regard to avocation and income of the 1st respondent, the Tribunal fixed a sum of Rs.6,500/- as monthly income of the 1st respondent and awarded a sum of Rs.32,500/- towards loss of income for a period of five months. The accident is of the year 2007 and the monthly income fixed by the Tribunal is proper. Considering the nature of injuries sustained by the 1st respondent, he would not have attended his work atleast for a period of six months. Therefore, the 1st respondent is entitled to a sum of Rs.39,000/- (Rs.6,500/- X 6) towards loss of income for six months. The Tribunal has not awarded any amount towards loss of amenities and damages to clothes. Considering the nature of injuries, a sum of Rs.20,000/- and Rs.2,000/- are granted towards loss of amenities and damages to clothes respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of earning capacity	3,00,300	-	Set aside
2.	Disability	-	1,20,000	Granted
3.	Loss of income	32,500	39,000	Enhanced
4.	Pain and sufferings	50,000	50,000	Confirmed

5.	Nutrition and transportation	20,000	20,000	Confirmed
6.	Attendant charges	10,000	10,000	Confirmed
7.	Medical expenses	-	30,000	Granted
8.	Loss of amenities	-	20,000	Granted
9.	Damages to clothes	-	2,000	Granted
	Total	Rs.4,12,800/-	Rs.2,91,000/-	Reduced by - Rs.1,21,800/-

15. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.4,12,800/- awarded by the Tribunal is hereby reduced to Rs.2,91,000/- together with interest at the rate of 6% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and then recover the same from the 2nd respondent/owner of the vehicle. On such deposit, the 1st respondent is permitted to withdraw the award amount along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.2471 of 2013, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl

To

1.The Special Subordinate Judge,
The Motor Accident Claims Tribunal
Krishnagiri.

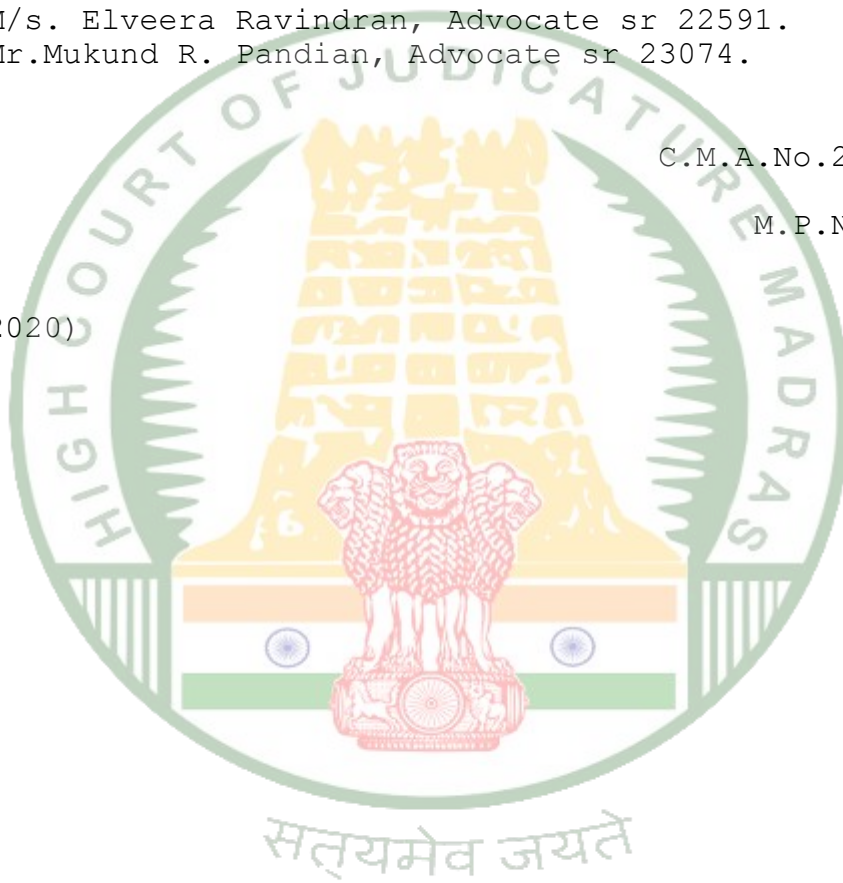
2.The Section Officer
VR Section
High Court
Madras.

+1 CC to M/s. Elveera Ravindran, Advocate sr 22591.

+1 CC to Mr.Mukund R. Pandian, Advocate sr 23074.

C.M.A.No.2190 of 2014
and
M.P.No.1 of 2014

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