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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2335 of 2014

and

M.P.Nos.1, 1 of 2014, 2014 &

C.M.P.No.11083 of 2017

The National Insurance Company Limited,
By its Manager having its Branch
Office at No.63, Rasi Palaza,
West Radhakrishnan Road,
Karur.

... Appellant/3rd Respondent

Vs.

1.Manikandan

2.Mathiyalagan

3.S.Gandhimathi

4.The Manager,
New India Assurance Company Limited,
482, SNV Chambers,
3rd Floor,
Coimbatore - 12.

... Respondents/Petitioner/
Respondents 1,2 & 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.01.2012 made in M.C.O.P.No.88 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Pollachi.

For Appellant : Mr.S.Vadivel

For R1 : Mr.S.Vinodh Kumar
for Mr.G.Arul Murugan

For RR 2 & 3 : No appearance

For R4 : Mr.R.Neethi Perumal



J U D G M E N T

The matter is heard through "Video-Conferencing".

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2.This Civil Miscellaneous Appeal has been filed against the award dated 24.01.2012 made in M.C.O.P.No.88 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Pollachi.

3.The appellant is the 3rd respondent in M.C.O.P.No.88 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Pollachi. The 1st respondent filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.10.2008.

4.According to the 1st respondent, on 19.10.2008 at about 01.00 A.M., while he was driving his van bearing Registration No.TN 38 AE 1833 on Chennai - Trichy NH 45 road near Ranjankottai Pirivu road at Perambalur District, the driver of the bus bearing Registration No.TN 47 R 7499 belonging to 3rd respondent and insured with the appellant, drove the bus from the opposite direction in a rash and negligent manner and dashed against the van driven by the 1st respondent and caused the accident. In the accident, the 1st respondent sustained grivous injuries on his right leg toe knee with fracture and multiple injuries all over the body. Therefore, he filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him against the respondents 2 to 4 and appellant-Insurance Company.

5.The respondents 2 and 3, being the driver and owner of the bus respectively remained exparte before the Tribunal.

6.The appellant-National Insurance Company Limited, being the insurer of the bus belonging to 3rd respondent filed counter statement and denied all the averments made by the 1st respondent. According to appellant, the 1st respondent has to prove that the accident has occurred only due to rash and negligent driving by the 2nd respondent-driver of the bus belonging to 3rd respondent. The appellant denied the manner of accident and the fact that the 2nd respondent was possessing valid driving license at the time of accident. The 1st respondent has to prove that the 3rd respondent's bus was insured with the appellant, bus belonging to 3rd respondent was possessing valid 'Fitness Certificate' and valid 'Permit' at the time of accident. According to appellant, the 2nd respondent was driving the bus very slowly keeping the left side of the road abiding by traffic rules and regulations and only the 1st respondent without



noticing the oncoming bus, hit against the bus and invited the accident. Therefore, the 2nd respondent-driver of the bus is not responsible for the accident and hence, the appellant is not liable to pay any compensation to the 1st respondent. The 1st respondent has to prove his age, avocation, income, nature of injuries, period of treatment taken and disability by producing valid documents. The appellant denied the fact that the 1st respondent's van was fully damaged due to the alleged accident and he spent a sum of Rs.3,50,000/- towards repair expenses, Rs.14,000/- towing charges and loss of earning due to non-plying of van. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

7.The 4th respondent-New India Assurance Company Limited, being the insurer of the van belonging to 1st respondent filed counter statement and denied various averments made by the 1st respondent. According to 4th respondent, the accident has occurred only due to rash and negligent driving by the 2nd respondent-driver of the bus. Hence, the 4th respondent is not liable to pay any compensation to the 1st respondent. The 1st respondent has to prove that he was possessing valid driving license and his van was insured with the 4th respondent at the time of accident. The 1st respondent has to prove his age, avocation, income, nature of injuries, period of treatment taken and disability by producing valid documents. In any event, the quantum of compensation claimed by the 1st respondent is exorbitant and prayed for dismissal of the claim petition.

8.Before the Tribunal, the 1st respondent examined himself as P.W.1 and one Mahalingam was examined as P.W.2 and 16 documents were marked as Exs.P1 to P16. On behalf of the appellant and 4th respondent, no oral and documentary evidence was let in.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to 3rd respondent and directed the respondents 2, 3 and appellant, being the driver, owner and insurer of the bus bearing Registration No.TN 47 R 7499 to jointly and severally pay a sum of Rs.1,33,750/- as compensation to the 1st respondent and dismissed the claim petition as against the 4th respondent.

10.Against the said award dated 24.01.2012 made in M.C.O.P.No.88 of 2009, the appellant-National Insurance Company Limited has come out with the present appeal.

11.The learned counsel appearing for the appellant contended that the Tribunal failed to see that the accident has occurred



only due to rash and negligent driving by the 1st respondent-driver of the van. The Tribunal contrary to the judgment of the Hon'ble Apex Court, fixed entire negligence on the part of the 2nd respondent instead of fixing negligence on the part of the 1st respondent. At the time of accident, 28 persons traveled in the van, while the seating capacity of the van is only 13. The Tribunal has power to independently decide the negligence without taking into account the Criminal Proceedings. The Tribunal failed to see that 1st respondent is also equally responsible for the accident and Tribunal ought to have fixed negligence on the part of the 1st respondent instead of fixing entire negligence on the part of the 2nd respondent-driver of the bus. The 1st respondent in the claim petition has stated that the van was insured for the damages to the van and third party risk with 4th respondent and the Tribunal ought to have directed the 4th respondent to pay the compensation to the damages to the van and ought not to have dismissed the claim petition as against the 4th respondent-insurer of the van. The learned counsel appearing for the appellant further contended that as per Section 147 (2) (b) of the Motor Vehicles Act, the appellant is liable to pay only a sum of Rs.6,000/- for the damages. The Tribunal failed to see that difference in Ex.P1 and P12 and ought to have dismissed the claim petition against the appellant and prayed for setting aside the award passed by the Tribunal.

12.The learned counsel appearing for the 1st respondent as well as the learned counsel appearing for the 4th respondent separately made their submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

13.Though notice has been served on the respondents 2 and 3 and their names are printed in the cause list, there is no representation on behalf of them, either in person or through counsel.

14.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and the learned counsel appearing for the 4th respondent and perused the entire materials on record.

15.From the materials available on record, it is seen that it is the contention of the 1st respondent that while he was driving the van on Chennai - Trichy NH 45 road near Ranjankottai Pirivu road at Perambalur District at 01.00 A.M., the 2nd respondent-driver of the bus belonging to 3rd respondent and insured with appellant, drove the bus in a rash and negligent manner and dashed against the van and caused the accident. In the accident, the 1st respondent sustained injuries and van got damaged completely. The 1st respondent has filed claim petition



claiming compensation against the respondents 2, 3 and appellant as driver, owner and insurer of the bus. The 1st respondent examined himself as P.W.1 and deposed to that effect. He also marked F.I.R., complaint, charge sheet, rough sketch, Motor Vehicle Inspector reports, judgment in Criminal Court as Exs.P1 to P7. On the other hand, it is the case of the appellant that 1st respondent without noticing the bus coming in the opposite direction, drove the van in a rash and negligent manner and dashed against the bus and caused the accident. The appellant did not examine the driver of the bus or any eyewitness to substantiate their contention. The Tribunal considering the evidence of 1st respondent as P.W.1, Exs.P1 to P6 and in the absence of any contra evidence, held that accident has occurred only due to rash and negligent driving by the driver of the bus, 2nd respondent herein. There is no error in the said finding of the Tribunal warranting interference by this Court.

16.As far as damages to the van is concerned, the 1st respondent has produced Ex.P10/photos, Ex.P11/assessment of damages and Ex.P12/receipt from the Coach Builders. The 1st respondent has deposed that he incurred a sum of Rs.2,53,670/- for repairing the van. The Tribunal considering Ex.P11/assessment of damages, which shows that assessment cost was Rs.1,23,750/-, awarded the said amount as compensation for the damages to the van. It is the contention of the learned counsel appearing for the appellant that 1st respondent has stated that van was insured for own damages and therefore only the 4th respondent-insurer of the van is liable to pay the compensation and the maximum compensation payable by them is only Rs.6,000/-. It is well settled that if any extra premium is paid, the limit fixed in provisions of Motor Vehicles Act can be enhanced. In the present case, the appellant has not contended that owner of the bus-3rd respondent herein has not paid extra premium for enhancement of compensation. Further the appellant has not taken such a stand that appellant is liable to pay only a sum of Rs.6,000/- for the damages caused to the van. On the other hand, the appellant has stated in the counter statement that the 1st respondent has to prove the damages and repairing charges by documentary evidence. The Tribunal considered Exs.P10 to P12 filed by the 1st respondent with regard to damages and cost of repairing of the van and awarded compensation which is not excessive.

17.For the above reason, this Civil Miscellaneous Appeal is dismissed and sum of Rs.1,33,750/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The respondents 2, 3 and appellant-National Insurance Company Limited are jointly and severally directed to deposit the award amount, along with interest and costs, less the amount if any already deposited, within a period of six



weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.88 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Pollachi. 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, by filing necessary applications before the Tribunal. This Civil Miscellaneous Appeal is dismissed as against the 4th respondent-New India Assurance Company Limited, the insurer of the van belonging to 1st respondent. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Subordinate Judge,
Pollachi.

Copy to

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

+1cc to M/s.G.Arul Murugan, Advocate Sr.39915

C.M.A.No.2335 of 2014

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srg 28/07/2021