

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.665 of 2014

and

M.P.No.1 of 2014

The Branch Manager,
The National Insurance Company Limited,
Karamadai Road, Mettupalayam. ..2nd Respondent/
Appellant

Vs.

1.V.Muthulingam ..Petitioner/1st Respondent
2.R.Vijayakumar ..1st Respondent/
2nd Respondent
3.R.Prabhu ..3rd Respondent/
3rd Respondent
4.The Managing Director,
M/s. Tamil Nadu State Transport Corporation,
Mettupalayam Road, Coimbatore Post. ..4th Respondent/
4th Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.09.2011 made in M.C.O.P.No.482 of 2009 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Coimbatore.

For Appellant : Ms.N.B.Surekha
For R1 : Mr.N.Elumalai
for Mr.J.Pothiraj
For R3 : No appearance
For R4 : Mr.A.Sundaravathanam
For R2 : Ex-parte

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J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 23.09.2011 made in M.C.O.P.No.482 of 2009 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Coimbatore.

3.The appellant is the 2nd respondent in M.C.O.P.No.482 of 2009 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Coimbatore. 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 22.08.2008.

4.According to the 1st respondent, on 22.08.2008 at about 05.30 P.M., while he was travelling as a pillion rider in the motorcycle bearing Registraion No.TN 40 B 8875 rode by the 2nd respondent on Wellington - Metttupalayam main road near 7th hairpin bend, the 3rd respondent who was driving the bus belonging to 4th respondent-Transport Corporation, drove the same in a rash and negligent manner and while trying to overtake the 2nd respondent's motorcycle, another bus came in the opposite direction. So, the 3rd respondent hit and crushed the 2nd respondent's motorcycle in which the 1st respondent was travelling as pillion rider. Due to the said impact, the 1st respondent caught under the bus and left side back wheel of the bus ran over the 1st respondent and due to the same, the 1st respondent sustained grievous injuries. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him against the respondents 2 to 4 and appellant-Insurance Company.

5.The 2nd respondent-owner of the motorcycle remained exparte before the Tribunal.

6.The appellant-Insurance Company, being the insurer of the motorcycle belonging to 2nd respondent filed counter statement and denied various averments made by the 1st respondent. According to appellant, the accident has not occurred due to negligence on the part of the 2nd respondent. The 3rd respondent only drove the bus in a rash and negligent manner, overtook the slowly plying motorcycle and ran over its rear wheel. The 3rd respondent rushed to the Police Station and made complaint against the 2nd respondent-rider of the motorcycle. Relying on the complaint made by the 3rd respondent, it cannot be held that the 2nd respondent was at fault. Since, the 2nd respondent is not responsible for the accident, the appellant-insurer of the 2nd respondent's motorcycle is not liable to pay any compensation. The 2nd respondent's motorcycle was insured with the appellant at the time of accident. If there is any violation of any terms and conditions of the insurance policy, the appellant is not liable to indemnify the insured. The 1st respondent has to prove that the 2nd respondent's motorcycle and the bus belonging to 4th respondent-Transport Corporation were having valid vehicular records 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 highly excessive and prayed for dismissal of the claim petition.

7.The 4th respondent-Transport Corporation filed separate counter statement and the same was adopted by the 3rd respondent. According to the 4th respondent-Transport Corporation, the accident has not occurred due to negligence on the part of the 3rd respondent as alleged by the 1st respondent. According to 4th respondent, the 2nd respondent-rider of the motorcycle who was coming behind the bus in a hectic speed, tried to over took the bus in left side narrow gap without following the traffic rules at the ghat road, grazed at the rear left side corner of the bus, fell down on the road and sustained injuries. Therefore, the accident has occurred only due to rash and negligent riding by the rider of the motorcycle, 2nd respondent herein. Hence, the 4th respondent is not liable to pay any compensation to the 1st respondent. The 2nd respondent was not possessing valid driving license at the time of accident. The 1st respondent has to prove that the motorcycle belonging to 2nd respondent was having valid R.C., F.C., M.V.Tax and insurance 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 Dr.Gajendran was examined as P.W.2 and 13 documents were marked as Exs.P1 to P13. The respondents 3, 4 and appellant-Insurance Company did not let in any oral and documentary evidence.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that both the respondents 2 and 3 are responsible for the accident, fixed negligence in the ratio 50% : 50%, awarded a sum of Rs.6,00,693/- as compensation to the 1st respondent and directed the appellant-Insurance Company as well as the 4th respondent-Transport Corporation to pay 50% each (i.e.,Rs.3,00,346.50) of the award amount.

10.Against the said award dated 23.09.2011 made in M.C.O.P.No.482 of 2009, the appellant-Insurance Company has come out with the present appeal.

11.The learned counsel appearing for the appellant contended that the Tribunal misdirected itself in holding that the 2nd respondent rider of the motorcycle also contributed 50% negligence to the accident when the 2nd respondent and appellant

were made only as formal parties. The 1st respondent who is the only eyewitness deposed that accident occurred due to rash and negligent driving by 3rd respondent-driver of the bus belonging to 4th respondent-Transport Corporation. The 4th respondent-Transport Corporation did not let in any evidence to disprove the evidence of P.W.1. In the absence of contra evidence to the evidence of P.W.1, the Tribunal erroneously fixed 50% contributory negligence on the part of the 2nd respondent-rider of the motorcycle and prayed for setting aside the portion of the award fixing 50% of the liability on the appellant. The learned counsel appearing for the appellant further contended that 1st respondent has not proved that he lost his job and his earning power. The Tribunal erred in adopting multiplier method in awarding compensation. The 1st respondent in the above affidavit mentioned that he has spent only a sum of Rs.2,26,872.74 and produced Ex.P12/medical bill for Rs.2,26,872.74. The Tribunal erred in awarding a sum of Rs.3,11,873/- towards medical expenses. The amount awarded by the Tribunal towards loss of income during the period of treatment is without any basis and prayed for setting aside the award of the Tribunal.

12.The learned counsel appearing for the 1st respondent made submissions in support of the award passed by the Tribunal and contended that 1st respondent has produced Ex.P12 only for Rs.3,11,873/- and Tribunal considering Ex.P12, awarded compensation as mentioned in Ex.P12 and prayed for dismissal of the appeal.

13.The learned counsel appearing for the 4th respondent contended that the accident has not occurred due to negligence on the part of the 3rd respondent. The 2nd respondent only rode the motorcycle in a rash and negligent manner and tried to overtake the 4th respondent's bus, fell down on the road and invited the accident. He further submitted that the 2nd respondent-rider of the motorcycle was not possessing driving license at the time of accident. Hence, the 4th respondent is not liable to pay any compensation to the 1st respondent. The Tribunal ought to have dismissed the claim petition as against the 4th respondent-Transport Corporation and prayed for setting aside the award of the Tribunal fixing 50% liability on the 4th respondent.

14.Though notice has been served on the 3rd respondent and his name is printed in the cause list, there is no representation on behalf of him, either in person or through counsel.

15.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.

16. It is the case of the 1st respondent that while he was traveling as a pillion rider in the motorcycle ridden by the 2nd respondent, the 3rd respondent-driver of the bus belonging to 4th respondent drove the bus in a rash and negligent manner and while trying to over take the motorcycle, suddenly came to the left hand side as another bus was coming in the opposite direction, hit the motorcycle and caused the accident. To substantiate this contention, the 1st respondent examined himself as P.W.1 and deposed to that effect and marked F.I.R. as Ex.P1. It is the contention of the respondents 3 and 4 that while the 2nd respondent who was coming behind the bus at hectic speed, tried to overtake the bus in the left hand side in a narrow gap without following the traffic rules at the ghat road grazed at the rear left side corner of the bus, fell down on the road and both of them sustained injuries. On the complaint given by the 3rd respondent, F.I.R. was registered against the 2nd respondent. The 2nd respondent admitted his guilt and paid fine. The 4th respondent did not let in any evidence. The 3rd respondent-driver of the bus or the 2nd respondent-rider of the motorcycle were not examined. The Tribunal considering the evidence of the 1st respondent as P.W.1, F.I.R., Rough Sketch, fixed 50% negligence on both the respondents 2 and 3. There is no error in the said finding of the Tribunal fixing 50% negligence on the part of the respondents 2 and 3.

17. As far as the contention of the learned counsel appearing for the appellant that respondents 2 and 3 were made only as formal parties is concerned, in the claim petition the 1st respondent has stated that 2nd respondent is necessary party and if the Tribunal holds that 2nd respondent is negligent, the 2nd respondent and appellant may be directed to pay the compensation. The Tribunal considering the entire materials, fastened 50% liability on the appellant and directed the appellant to pay 50% of the compensation awarded. There is no error in the said finding of the Tribunal warranting interference by this Court.

18. As far as quantum of compensation is concerned, the 1st respondent has contended that he suffered injuries mentioned in the claim petition. The 1st respondent examined himself as P.W.1 and deposed to that effect and examined P.W.2/Doctor. P.W.2/Doctor deposed about the nature of injuries sustained by the 1st respondent. P.W.2/Doctor examined the 1st respondent and certified that 1st respondent suffered 32% disability. The Tribunal considering the nature of work done by the 1st respondent, injuries and evidence of P.W.2/Doctor, accepted the disability certificate assessed by P.W.2/Doctor and adopted

multiplier method for granting compensation. The 1st respondent in the claim petition has claimed that he was working as Wireman and was earning a sum of Rs.10,000/- per month. In the absence of any material evidence with regard to avocation and income, the Tribunal has fixed a sum of Rs.4,500/- per month as notional income of the 1st respondent, deducted 1/3rd towards personal expenses and awarded compensation for 32% of disability, which is proper. The amounts awarded by the Tribunal under other heads are not meagre and the same are hereby confirmed. The learned counsel appearing for the appellant contended that 1st respondent has produced Ex.P12 only for a sum of Rs.2,26,872/- and the Tribunal has awarded a sum of Rs.3,11,873/- towards medical bills contrary to the materials on record. From the materials available on record, it is seen that the 1st respondent has claimed a sum of Rs.3,11,872.74 as medical expenses incurred by him, as per Ex.P12. In the said Ex.P12, it is seen that a sum of Rs.85,000/- has been mentioned as expenses incurred by him whereas the said amount has already been reflected in Bill No.6089 dated 17.09.2008. Hence, the 1st respondent is entitled to only a sum of Rs.2,26,873/- as compensation towards medical expenses. 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
1.	Disability	1,84,320/-	1,84,320/-	Confirmed
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed
3.	Medical expenses	3,11,873/-	2,26,873/-	Reduced
4.	Attendant charges	6,000/-	6,000/-	Confirmed
5.	Extra nourishment	5,000/-	5,000/-	Confirmed
6.	Transportation	5,000/-	5,000/-	Confirmed
7.	Loss of income	13,500/-	13,500/-	Confirmed
8.	Future prospects	50,000/-	50,000/-	Confirmed
	Total	Rs.6,00,693/-	Rs.5,15,693/-	Reduced by Rs.85,000/-

19. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,00,693/- is hereby reduced to Rs.5,15,693/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company and the 4th respondent-Transport Corporation are directed to deposit 50% each of the award amount (i.e., Rs.2,57,846.50 each), along

with interest and costs, less the amount if any already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.482 of 2009 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Coimbatore. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company and 4th respondent-Transport Corporation are permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.482 of 2009, if the entire amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Coimbatore.

Copy to

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

+1cc to M/s.N.B.Surekha Advocate, S.R.No.39679

+1cc to Mr.N.Elumalai, Advocate, S.R.No.39661

C.M.A.No.665 of 2014

RP (CO)
KM(23/04/2021)