



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.588 of 2017

M/s.National Insurance Company Ltd.,
Branch Office - III,
Thanthai Periyar Market Complex,
Old Bus Stand,
Salem - 600 001.

... Appellant/Respondent II

Vs.

1.Balamurugan

..Respondent-I/Petitioner

2.Rukmani

... Respondents-II/Respondent I

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.12.2015 made in M.C.O.P.No.274 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub Court No.1 of Salem.

For Appellant : Mr.J.Chandran

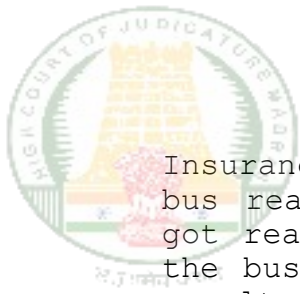
For R1 : Mr.H.Manojin

: No appearance for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 08.12.2015 made in M.C.O.P.No.274 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub Court No.1 of Salem.

2.The appellant is the second respondent in M.C.O.P.No.274 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub Court No.1 of Salem, Coimbatore District. 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 06.10.2011. According to the 1st respondent, on the date of accident, at about 08.45 p.m., he was travelling in the bus bearing Registration No.TN 30 F 7579, belonging to the 2nd respondent and insured with the appellant



Insurance Company, from Salem to Kullappanayakanur and when the bus reached near Kullappanayakanur bus stop, the 1st respondent got ready to get down from the bus, at that time the driver of the bus drove the bus in a rash and negligent manner, and as a result, the 1st respondent fell down from the bus and sustained multiple injuries. Therefore, the 1st respondent filed the said claim petition claiming compensation against the 2nd respondent and appellant/Insurance Company.

3.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition stating that the 1st respondent did not travel in the bus on the date of accident, but he was riding his two wheeler bearing Registration No.TN 30 5386 in a rash and negligent manner and it hit on a stone and due to the same, he fell down from the two wheeler. At the time of accident, the first respondent was in a drunken mood, according to the appellant Insurance Company. It is also submitted that the compensation awarded by the Tribunal is excessive.

4.The 2nd respondent/owner of the bus, remained ex parte before the Tribunal.

5.The Tribunal, considering the pleadings, oral and documentary evidence, has observed that the first respondent was travelling in the foot-board of the bus carelessly and hence the first respondent has contributed to the accident. The Tribunal has also observed that when the first respondent was travelling in the foot-board, the conductor of the bus ought to have advised and asked the first respondent to enter into the bus fully, but the same has not been done either by the conductor or the driver of the bus. In these circumstances, the Tribunal fixed 80% contributory negligence on the part of the driver of the bus and 20% contributory negligence on the part of the claimant and awarded a sum of Rs.1,12,000/- (after deducting 20% contributory negligence) with interest at the rate of 7.5% per annum from the date of petition, as compensation to the claimant.

6.The learned counsel appearing for the appellant/Insurance Company has contended that the accident had occurred only due to the rash and negligent riding of the two wheeler by the 1st respondent and the same is evident from the FIR which was registered against the 1st respondent in Crime No.242 of 2011 by Panamarathupatti Police. In the FIR, it is stated that while the 1st respondent was riding his two wheeler, he fell down from the vehicle due to hitting on a stone and sustained injuries. After preparation of mahazar, rough sketch and examination of witnesses, the 1st respondent informed the police i.e., on 06.10.2011 that he sustained injuries while travelling as a passenger in a foot board of the bus. As per the Accident Register of M/s.Neuro Foundation, the date of accident was



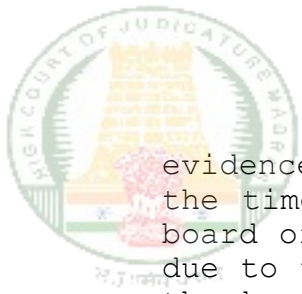
corrected as 07.10.2011. The police, after investigation, referred the case as mistake of fact on the ground that the 1st respondent has given a false complaint to get compensation. The Tribunal failed to appreciate the evidence of RW1 in this regard. The Tribunal ought to have dismissed the claim petition on the ground of suppression of material facts and for fabricating the evidence. The compensation awarded by the Tribunal is also on the higher side, according to the learned counsel for the appellant Insurance Company.

7. Per contra, the learned counsel appearing for the 1st respondent has contended that the accident had occurred solely due to the rash and negligent driving by the driver of the bus belonging to the 2nd respondent and hence the Tribunal has erred in fixing 20% contributory negligence on the part of the 1st respondent.

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

9. It is the contention of the 1st respondent that while he was getting down from the bus belonging to the 2nd respondent, the driver of the bus drove the bus in a rash and negligent manner and due to the same, the 1st respondent fell down and sustained injuries. According to the first respondent, when he was unconscious, the police have recorded his statement and therefore the averments made in the FIR that he fell down due to his vehicle hitting on the stone are false and the same have to be rejected.

10. It is true that there is no complaint on the part of the appellant/ Insurance Company that the 1st respondent has claimed compensation illegally. Further, no report was filed by the appellant/Insurance Company with regard to the investigation of the accident. PW2/Madheswaran in his evidence has clearly deposed that the accident had occurred only when the 1st respondent was travelling in the bus. In support of his contention, the learned counsel appearing for the 1st respondent has relied on the decisions of this Court as well as the Hon'ble Apex Court. The Tribunal, accepting the contention of the learned counsel appearing for the 1st respondent and the decisions relied on by him, held that the appellant/Insurance Company did not file any criminal case against the 1st respondent stating that he has filed the claim petition illegally and the appellant/Insurance Company did not examine the person who investigated the accident and did not file the investigation report and did not produce any evidence to show that the copy of the final report has been served to the 1st respondent. Though the appellant/Insurance Company has examined RW1 to prove their case, he was not an eyewitness to the accident and hence, his



evidence was not accepted. PW3 in his evidence deposed that at the time of accident the 1st respondent was standing on the foot board of the bus. PW2 in his cross examination deposed that only due to the negligent act of the 1st respondent, he fell down from the bus and the accident occurred. Therefore, the Tribunal held that the accident had occurred due to the negligent act of both the driver of the bus as well as the 1st respondent and fixed 80% and 20% contributory negligence on both of them and accordingly, directed the appellant/Insurance Company being insurer of the said bus to pay compensation. This Court is not inclined to interfere with the said factual findings arrived at by the Tribunal.

11.As far as the quantum of compensation awarded by the Tribunal, the Tribunal has relied upon the exhibits, evidence of witnesses, treatment records of the injured, percentage of disability assessed by the Doctor, Salary Certificate and all other aspects in a proper perspective and has awarded the compensation under various heads to the claimant. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and hence the same are confirmed.

12.In the result, this Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit a sum of Rs.1,12,000/- along with interest at the rate of 7.5% per annum from the date of petition, as ordered by the Tribunal, after deducting the amount if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the 1st respondent is permitted to withdraw the same on making proper application. No costs.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

mtl

To

1. The Special Subordinate Judge No.1
Motor Accident Claims Tribunal,
Salem.



Copy To

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

WEB COPY

+1cc to Mr.J.Chandran, Advocate SR.No.30546

C.M.A.No.588 of 2017

VG II(CO)
GMY(17/08/2021)