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C.M.A.(MD) No.351 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.351 of 2009

and

M.P. (MD) No.1 of 2009

United India Insurance Co., Ltd.,
254, Good Shed Street, Madurai

... Appellant/2nd Respondent

-vs-

1.Thangamuthu

.. 1st Respondent/Petitioner

2.A.Maria Levil Fitzarld

... 2nd Respondent/1st Respondent

[R2 remained ex parte before the Tribunal]

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 28.10.2008 in M.C.O.P.No.183 of 2002, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Karur.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.Sarangan for R1
R2 - *Ex parte*

J U D G M E N T

This civil miscellaneous appeal arises out of the Judgment and Decree, dated 28.10.2008 passed in M.C.O.P.No.183 of 2002, by the Motor Accident Claims Tribunal / Subordinate Judge, Karur, wherein the Tribunal has awarded Rs.1,50,000/- along with interest at the rate of 7.5% per annum as compensation to the claimant against the claim of Rs.2,72,500/-.

2. The claimant would state that he is the owner of the Lorry bearing registration No.TDW 9810, which got damaged in a road accident caused by a Tempo Van bearing registration No.TN65 C0326 owned by the second respondent and insured with the appellant - Insurance Company. It is the case of the claimant that on 14.07.2002, at about 01.30 hours, the driver of the Lorry drove the vehicle carefully and adhering to the road rules. When he reached Vedachandur near Ramachandra Mill at 02.30 hours, the offending Tempo Van came in the opposite direction in a rash and negligent manner and rammed the Lorry, as a result of which, the Lorry capsized and the oil contained in the tank leaked and got fire. He would further state that due to the said accident, a Tata Sumo



bearing registration No.TN27 8676, which was following the Lorry, also got capsized. Since the Lorry was damaged due to the fire, the owner of the offending Tempo Van and its insurer are liable to pay compensation.

3. The appellant - Insurance Company filed a detailed counter denying and disputing the averments made in the claim petition.

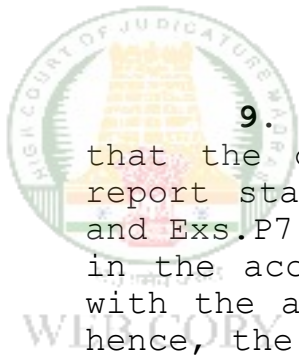
4. The claimant examined three witnesses and marked nine documents and the Insurance Company examined one witness and marked three documents.

5. On appreciation of evidence, the Tribunal found that the driver of the Tempo Van was responsible for the accident and awarded a compensation of Rs.1,50,000/- along with interest at the rate of 7.5% per annum. Challenging the same, the present appeal has been filed.

6. Mr.J.S.Murali, learned counsel appearing for the appellant - Insurance Company, would argue that the Tribunal failed to note that the offending Tempo Van dashed against the diesel tank of the Lorry, which would show that the Lorry was in a moving position and hence, the Tribunal ought to have fixed contributory negligence. It is also contended that it is the case of composite negligence and the drivers of all the three vehicles involved in the accident were negligent and therefore, the Tribunal ought to have fixed percentage of negligence on each driver and ought to have apportioned the liability accordingly.

7. Mr.M.Sarangan, learned counsel appearing for the first respondent / claimant justified the findings of the Tribunal and prayed for dismissal of the civil miscellaneous appeal.

8. On perusal of the impugned Judgment, it is seen that about 28 claim petitions were filed before the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Karur, claiming compensation for the accident occurred on 14.07.2002. The copy of the Decree and common Judgment in M.C.O.P.No.32 of 2003 etc. batch came to be marked as Exs.P5 and P6 respectively, wherein the Tribunal held that the driver of the Tempo Van was responsible for the accident. The claimant also marked the copy of Valuation Report as Ex.P8 and photographs of the damaged Lorry as Ex.P7. P.W.2 - driver of the Lorry has stated before the Tribunal that only after the Lorry was rammed by the Tempo Van, the Tata Sumo hit against the Lorry. On the basis of the Decree and common Judgment in M.C.O.P.No.32 of 2003 etc. batch (Exs.P5 and P6), Motor Vehicle Inspector's Report for the Lorry and Tempo Van (Ex.P2 and Ex.P3 respectively), the Tribunal, in my view, has rightly held that the driver of the Tempo Van was responsible for the accident and the said finding is confirmed.



9. With regard to damages, the claimant (P.W.1) has stated that the damage was Rs.2,75,000/-. The Surveyor (P.W.3) gave a report stating that the damage was to the extent of Rs.2,18,110/- and Exs.P7 and P8 show that 75% of the Lorry was damaged due to fire in the accident. Ex.R1 shows that the claimant insured his Lorry with the appellant - Insurance Company at the time of accident and hence, the appellant - Insurance Company is liable to compensate the damages to the vehicle. On analysis of the above evidence, the Tribunal came to the conclusion that the claimant is entitled for Rs.1,50,000/- towards loss along with interest at the rate of 7.5% per annum, which in my considered opinion, is fair and reasonable and therefore, it does not warrant any interference of this Court.

10. In view of the above findings, the civil miscellaneous appeal is dismissed, as devoid of merits. Since the appeal is dismissed, the appellant - Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

- 1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Karur.



2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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