



WEB COPY

C.M.A. (MD) .No.189 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 07.12.2020

DATE ON WHICH PRONOUNCED : 14 .12.2020

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

C.M.A. (MD) .No.189 of 2010

in

MP (MD) No. 1 of 2010

Managing Director,
Tamilnadu State Transport Corporation Limited,
Virudhunagar.

: Appellant /1st Respondent

Vs.

1.Annalakshmi : 1st Respondent/Petitioner

2.M.Selvaraj : 2nd Respondent/ 2nd Respondent

3.United India Insurance Co Ltd.,
Rep by its Divisional Manager,
No.111-A, Kamarajar Salai,
Sivakasi. : 3rd Respondents/ 3rd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.01.2007 passed in MCOP.No.61 of 2005 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court), Virudhunagar.

For Appellant : Mr.S.C.Herold Singh

For R1 : Mr.M.S.Palanivelayutham

For R2 : M.Selvaraj

For R3 : Mr.S.Natarajan



JUDGMENT

This Civil Miscellaneous Petition has been filed against the judgment and decree dated 20.01.2007 passed in M.C.O.P.No.61 of 2005 on the file of the Motor Accident Claim Tribunal (Additional District Judge, Fast Track Court), Virudhunagar.

2. The case of the claimant before the Tribunal:-

The petitioner was travelling along with her goods on 06.12.2003 at about 12.15 p.m in a vehicle bearing Registration No.TN-74-B-3317 from Saminatham - Virudhunagar. When the Van was nearing Kumaralingapuram bridge, the driver of the Van lost control and hit against the bus bearing Registration No.TN -67- N-0057 which came in the opposite direction. It was a head on collision. The driver of the appellant was also negligent in driving. After the accident, the petitioner was admitted in Virudhunagar Government Hospital and later, admitted in Rajaji Government Hospital, Madurai. She had fracture on her right hand. So, she claimed total compensation of Rs.1.50 lakhs from the appellant as well as from the owner of the vehicle bearing Registration No. TN-74-B-3317.

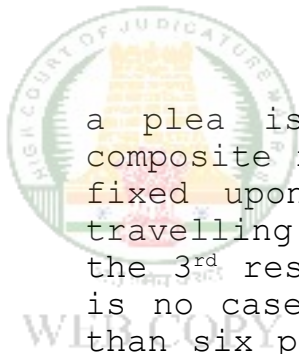
3. The case of the appellant/first respondent before the Tribunal is that the petitioner suffered only minor injuries and only because of the negligent driving on the part of the Van driver, the accident took place.

4. The case of the 3rd respondent before the Tribunal is that the accident took place only due to the rash and negligent driving on the part of the appellant driver. So, the Van driver was in no way responsible for the accident.

5. Before the Tribunal, on the side of the claimant, 5 witnesses were examined and 15 documents marked. On the side of the respondent, two witnesses were examined and two documents marked.

6. After enquiry, the Tribunal came to the conclusion that the drivers of both the vehicles were responsible for the occurrence and the composite negligence was fixed at 60% on the Van driver in which, the petitioner was travelling and 40% upon the appellant driver and awarded the total compensation amount of Rs.90,750/- with interest and cost. The appellant was directed to pay 40% of the amount and the respondents 2 & 3 before the Tribunal were directed to pay 60% of the compensation. The respondents Nos.2 & 3 before the Tribunal have not filed any appeal. Only the Transport Corporation / first respondent before the Tribunal, filed this appeal.

7. According to the appellant, the petitioner was travelling in a goods vehicle and 7 persons travelled against the Permit Rules and this fact was not taken into account by the Tribunal. But, such



a plea is not available to the appellant. This is a case of composite negligence. As mentioned earlier, 60% of negligence was fixed upon the driver of the Van in which, the petitioner was travelling and that policy violation is to be canvassed only by the 3rd respondent. A perusal of the evidence would show that there is no case was put up that only because of the travelling of more than six persons, the occurrence took place. But, on the contra, it is the evidence of the petitioner that she was travelling in a goods vehicle along with her harvested medicinal plants. So, the contention of the petitioner that she was not an authorised passenger, cannot be accepted and it appears that she travelled in the above Van along with her goods after paying proper fare for transporting the goods.

8. Before the Tribunal, only the appellant's driver was examined as witness and 3rd respondent vehicle's driver was not examined. From the evidence of R.W.1 and eyewitness, it is seen that there was a head on collision between these two vehicles and at the time of accident, Motor Vehicle Inspector examined and inspected the vehicle and found that both the vehicles' front sides were damaged due to the accident and both the vehicles were not in a position to move. It is also seen that the place of occurrence is a National Highway. Since two vehicles can easily pass on at the same time, both the vehicles were proceeded in opposite direction since it is a head on collision between two vehicles, the contention on the part of the appellant that only the 3rd respondent's vehicle driver was solely responsible for the accident, is without any substance, only for the simple reason that the 3rd respondent's vehicle driver was not examined before the Tribunal. Eventhough, the Tribunal assessed 60% composite negligence against the Van driver, it is seen that after hitting, the Van went to extreme edge of the road. Only 40% composite negligence was fixed upon the driver of the appellant. Since it is head on collision, the percentage of negligence fixed by the Tribunal is found to be just and reasonable and the contention on the part of the appellant that the accident took place only due to the negligence of the 3rd respondent vehicle's driver cannot be accepted. These aspects require no interference.

9. Point No.2:-

The Tribunal assessed the monthly income of the petitioner as Rs.2,000/-. Even though there is no documentary evidence to show the income of the petitioner it is in evidence that she harvested the medicinal plants and sold the same in town areas, such a person easily get a minimum amount of Rs.2,000/- per month at the time of the accident. So, the monthly income assessed by the Tribunal requires no interference which is reasonable.

10. The petitioner sustained fracture on the right hand in humerus bone, radius and ulna for which, she underwent a surgery. The Doctor who assessed the disability, was examined as P.W.2. According to his evidence, the movement of her hands found



restricted in that area. The Doctor assessed the disability at 69%. The certificate was marked as Ex.P.11. In Ex.P.5/Accident Registrar discloses the fact that the petitioner suffered fracture on the right hand in humerus bone, radius and ulna and both the bones on the right hand. She took treatment as inpatient from 06.12.2003 to 08.12.2003 in the Government Hospital and also underwent a surgery. Later, from 24.08.2004 to 04.09.2004, she took treatment as inpatient as per Ex.P.7 in Sivakasi Hospital and later in Tiruthangal Hospital from 15.08.2004 to 21.08.2004 as per Ex.P.8. So, the evidence on record reveals that the petitioner suffered more than one fracture in her hands and took continuous treatment. Even though the Doctor assessed disability at 69%, the Tribunal assessed the same at 49% and for the disability, awarded a sum of Rs.49,000/- as compensation for partial permanent disability. Even though, such assessment is not permissible under law, no appeal is preferred by the claimant. So, the compensation amount fixed for the partial permanent disability, is confirmed. The medical expenses and customary amount of such loss of Income, Transport charge, Extra Nourishment, Pain and sufferings were also fixed as Rs..5,000/-, Rs.250/-, Rs.3,000/- and Rs.8,000/- respectively.

11. I find that these fixations are reasonable. Medical expenses as per Ex.P.8 was calculated at Rs.19,500/-.

12. So, this Court find that there is no reason to interfere with the assessment of the compensation and also find no merits in the appeal.

13. In view of the same, the award passed by the Motor Accident Claim Tribunal (Additional District Judge, Fast Track Court), Virudhunagar in M.C.O.P.No.61 of 2005 dated 20.01.2007 is confirmed.

14. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss



Note:

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

To

1. The Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court), Virudhunagar.
2. The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies).

+1cc to Mr.S.Natarajan, Advocate Sr.No.25602

judgment made in

C.M.A. (MD) .No189 of 2010
in
MP (MD) No. 1 of 2010

14.12.2020

PM (CO)

NR (19/01/2020) 5P : 5C