WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A.No.3409 of 2011
and M.P.No.1 of 2011 and
C.M.P.No.219 of 2016

The New India Assurance Company,
No.42, Vasvi Buildings, 2nd Floor,
Big Street, Tiruvannamalai ..Appellant/2nd Respondent

Versus

1.A.Shabeer Ahamed ...Respondent/Petitioner

2.S.Murugan

3.K.C.Veeramani

4.ICICI Lombard Insurance Company,
No.140, 2nd and 3rd Floor,
Nungambakkam High Road,
Chennai - 34. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 14.02.2011 made in M.C.O.P.No.322 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Tirupattur, Vellore District.

For Appellant : Mr.K.Vinoth

For Respondents : Ms.R.Srividhya [for R4]

R2 - Notice unserved

R3 - Notice served

*****

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

J U D G M E N T

The Appellant/Insurance Company has filed this appeal against the judgment and decree dated 14.02.2011 made in M.C.O.P.No.322 of 2008 on the file of the Motor Vehicle Accidents Claims Tribunal, Sub Court, Tirupattur, Vellore District.

2. The learned counsel appearing for the appellant submits that the second and third respondents were set exparte.

3. The case of the first respondent/claimant is as follows:

On 26.02.2008 at about 3.15 p.m. near Velakkalanatham in between Natrampalli – Burgur on National Highways at Velakkalanatham Check Post 'U' turn, the lorry bearing Registration No.TDB-3479 belonging to the 2nd respondent driven, by its driver in the course of his employment under the 2nd respondent in a very rash and negligent manner towards National Highways main road from Halinpalli on side road and turned towards Natrampalli and hit against the tempo trax bearing Registration No.TN-23-AW-1719 which was driven by its driver in the course of his employment under 3rd respondent towards Krishnagiri from Natrampalli slowly and cautiously. Due to the accident, the 1st respondent/claimant, who was travelling in the tempo trax bearing Registration No.TN-23-AW-1719 as an agent and Manager of the 3rd respondent goods sustained grievous injuries on his left shoulder and sustained fracture on his left proximal in three part and anterior Gleniod. Immediately after the accident, the claimant was taken to Government Hospital, Tirupattur and given treatment and from there, he was taken to V.H.Hospital, Tirupattur, where he had taken treatment and on the next day, the claimant was taken to MIOT Hospital, Chennai and admitted as an inpatient on 27.02.2008 and he had taken treatment till 06.09.2008. Thereafter, the claimant had taken treatment in the above said MIOT Hospital, Chennai as an out patient. Again, the claimant had taken treatment in a private hospital as an out patient. The claimant was working as an agent and Manager of the 3rd respondent and he was earning a sum of Rs.5,000/- per month. Since the claimant suffered permanent disability, he was not able to carry on his avocation as he was doing before. Hence, the claimant filed a claim petition seeking compensation in a sum of Rs.3,00,000/- for the injuries sustained by him in the accident.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

4. Resisting the claim made by the 1st respondent/claimant, the 2nd respondent / Insurance company had filed a detailed counter statement inter alia that the accident did not occur in the manner as projected by the claimant. They had also denied the occupation and income of the claimant. Thus, they prayed for dismissal of the claim petition.

5. Before the Tribunal, to prove his case, the claimant examined himself as PW-1 and one Dr.Elangovan was examined as P.W.2 and documents were marked as Exs.P1 to P.23. On the side of the respondents, one J.Sarathy DW-1 and Lakshman DW-2 were examined, and documents Exs.DW1 and DW2 were marked.

6. On appreciation of materials, the Tribunal arrived at a finding that the accident had occurred due to the rash and negligent driving of the lorry bearing Registration No.TDB-3479 belonging to the 2nd respondent driven by its driver and held that the appellant / Insurance Company, as insurer of the said vehicle, is liable to pay compensation. Accordingly, the Tribunal awarded a sum of Rs.1,85,000/- as compensation. The break-up details are as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1	Disability	84,000.00
2	Pain and Sufferings	2,000.00
3	Nutrition	5,000.00
3	Attendant	5,000.00
5	Medical Bills	79,194.00
6	Transport	2,000.00
7	Income	7,806.00
	TOTAL	1,85,000.00

7. Heard the learned counsel for appellant / Insurance Company and the learned counsel appearing for the 1st respondent and learned counsel for the 4th respondent.

8. According to the learned counsel for the appellant/Insurance Company, the learned counsel for the 1st respondent/claimant had preferred the claim petition in M.C.O.P.No.322 of 2008 towards the compensation amount for the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

grievous injury sustained by him due to the rash and negligent driving of the driver, driven by the Appellant/Insurance Company. Both the drivers had lodged complaints. Considering the oral and documentary evidence adduced, the Tribunal has awarded compensation of Rs.1,85,000/- to the claimant by fixing the liability as against the Appellant/Insurance Company. Challenging the award of the Tribunal fastening the liability on the appellant/Insurance Company, the present appeal has been preferred.

9. According to the learned counsel for the Appellant/Insurance Company, the driver of the vehicle insured with the appellant had lodged a complaint before the Station House Officer. Based on the complaint, an FIR was registered in Crime No.230 of 2008. From the said complaint, it is very clear that because of the vehicle insured with the 4th respondent, the accident had happened. At the time of trial, based on the claimant's evidence, the Tribunal has awarded the compensation amount fixing the liability on the Appellant/ Insurance Company. According to the Appellant/Insurance Company, the complaint lodged by the driver of the vehicle insured with the appellant was not considered by the Tribunal. Therefore, the appellant/Insurance Company has to be exonerated of the liability.

10. The learned counsel for the 4th respondent / Insurance company would submit that the Court below had elaborately considered the evidence adduced by the claimant and came to the conclusion that due to the negligence on the part of the vehicle insured with the appellant, the said accident had happened. Therefore, no interference is warranted with the award passed by the Tribunal.

11. Considered the rival submissions of the parties and perused the materials on record.

12. The point for consideration in the appeal is whether the appellant/Insurance company is liable to pay the compensation amount for the disputed negligence on the part of the driver of the vehicle insured with the appellant/insurance company.

13. The driver of the vehicle insured with the appellant had lodged a complaint before the Station House Officer, Natrampalli, on 26.02.2008. In the aforesaid FIR, it is specifically stated that the driver of the 4th respondent insured vehicle committed a mistake and due to his rash and negligent

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

driving, the said accident had happened. It is an admitted fact that P.W.1 is the claimant who was also travelling along with the driver in the vehicle belonging to the 3rd respondent insured with the 4th respondent. Further, it is brought to the notice of this Court that after the accident, P.W.1 had preferred the complaint after a period of three weeks by stating that the vehicle insured with the appellant was involved in the said accident, due to which he sustained injuries. Apart from that, there is no other material placed on the side of the appellant and the driver of the appellant insured vehicle as well as the driver of the 4th respondent insured vehicle have not been examined before the Tribunal. In the absence of any other materials to prove that the claimant was an agent of the 3rd respondent and was not travelling as an unauthorised passenger in the vehicle insured with the 4th respondent, there is some force in the contention of the appellant that the appellant Insurance Company alone cannot be held liable. However, the appellant has not established before this Court to absolve itself of the liability of the aforesaid accident. Considering the complaint made by the driver of the vehicle insured with the appellant, this Court holds that both the vehicles are responsible and liable for the said accident. Therefore this Court fixes the negligence on the part of the appellant as well as 4th respondent.

14. In view of the above said discussion, the Appellant/ Insurance Company is liable to pay 50% of the compensation amount to the claimant. Therefore the award passed by the Tribunal is modified by directing the Appellant/Insurance Company to deposit 50% of the total compensation amount awarded by the Tribunal and the remaining 50% shall be deposited by the 4th respondent/Insurance company, less amount already deposited within a period of six weeks from the date of receipt of a copy of this order.

15. According to the learned counsel for the Appellant/Insurance Company, the appellant had already deposited the entire compensation amount before the Tribunal. Therefore, the 4th respondent shall deposit 50% of the compensation amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this order. The Appellant/Insurance Company is entitled to withdraw the excess deposited amount before the Tribunal by filing appropriate application. The 1st respondent / claimant is permitted to withdraw the said amount by filing appropriate application before the Tribunal.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

16. In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

bri

To

1.The Motor Vehicle Accidents Claims Tribunal,
Sub Court, Tirupattur, Vellore District.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to M/s.Elveera Ravindran, Advocate SR.No.11715
+1cc to M/s.Sreevidhya, Advocate SR.No.11871
+1cc to Mr.PA.Sudesh Kumar, Advocate, SR.No.11748

C.M.A.No.3409 of 2011
and M.P.No.1 of 2011 and
C.M.P.No.219 of 2016

JPL(CO)
CB(19/04/2022)

https://hcservices.ecourts.gov.in/hcservices/