



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.2853 OF 2012

Minor Arunkumar
rep. by his mother Poomalli,

... Appellant/Claimant

Vs.

1. Govindan

2. The Divisional Manager,
The united India Insurance Co. Ltd.,
No.46, Katpadi Road, Vellore.

... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 15.06.2011 passed in M.C.O.P. No.587 of 2006 by the Principal Subordinate Judge, Motor Accident Claims Tribunal, Thiruvannamalai.

For Appellant : Mr. Terry Chella Raja

For Respondents : Mr. Mukund (for R1)
for M/s Sarvabhauman Associates
Ms.R.Sreevidhya (for R2)



J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal to enhance the compensation.

2. The claimant has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 01.05.2005.

3. The brief case of the claimants is as follows: On 01.05.2005 at about 7.30 a.m., the claimant was travelling as a cooli in a Tractor bearing registration NO.TN-27-Z-5100 attached to the Trailer bearing registration No.TN-25-A-2246, belonging to the first respondent, to load the bricks in the tractor from Appupattu Village and while the Tractor and Trailer nearing the land of Renu Reddiyar at Pavithram Junction, the first respondent drove the vehicle rashly and negligently, thereby the claimant was thrown out from the Tractor and sustained fracture and also grievous injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the tractor was the cause of accident and since the first respondent insured his vehicle with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the Insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, his mother and Dr.K.Ravindran were examined as PW1 and PW2 and Ex.P1 to Ex.P7 were marked. On side of the respondents, one witness was examined as RW1 and Ex.R1 was marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.52,000/- as compensation to the claimant and directed the first respondent/ owner of the tractor to pay compensation to the claimant. The compensation awarded under various heads is extracted hereunder.



WEB COPY

Sl No	Heads	Amount in Rs.
1	Disability (20 x 2000)	40000
2	Pain and sufferings	10000
3	Extra nourishment	2000
	Total	52000

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal.

7. Heard the learned counsel for the appellant/ claimant and the counsel for the second respondent/ insurance company, and I have perused the materials on record.

8. The learned counsel appearing for the appellant/ claimant submitted that the Tractor involved in the accident was insured with the second respondent and the claimant was travelled as a cooli. Therefore, the Tribunal ought to have directed the insurance company as well as the owner of the Tractor to pay the compensation jointly to the claimant, however, the Tribunal has fixed the liability only on the owner of the tractor to pay compensation, which is unsustainable. It is further contended that, without considering the materials filed by the claimant and the nature of fracture and injuries sustained by him, the Tribunal has awarded a very meagre amount as compensation and hence, prayed for enhancement of compensation.

9. The learned counsel appearing for the insurance company submitted that after analysing all the evidence and the materials on record, the Tribunal has awarded a just and reasonable compensation and directed the first respondent/ owner of the Tractor to pay compensation. She further submitted that since the claimant has travelled unauthorisedly in the tractor, which is used only for agriculture purpose, the insurance company has no liability to pay compensation and therefore, the Award passed by the Tribunal does not warrant any interference by this court.



10. Now the point for consideration are

1. Whether the compensation awarded by the Tribunal is liable to be enhanced.

2. Whether the insurance company is liable to pay compensation to the claimants.

11. Point No.1 and 2

The learned counsel appearing for the insurance company submitted that the claimant has travelled in the tractor unauthorisedly, which is used only for agriculture purpose and hence, the insurance company cannot be held liable to pay compensation. In support of her arguments, she relied upon a decision in Bharathi Axa General Insurance Company Limited Vs. Anandi and others in CMA 1529 to 1533 of 2015 dated 24.10.2018, wherein, a Division Bench of this court, after analysing various judgments of the Honourable Supreme Court has held thus.

50. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in



directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.

WEB COPY

51. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.

In the light of the decisions of the Honourable Supreme court as well as the decision of this Court, there is no grounds to fasten liability as against the insurance company. Therefore, the order passed by the tribunal directing the owner of the Tractor and Trailer to pay compensation to the claimant is liable to be confirmed. In so far as the quantum of compensation is concerned, after analysing the various factors and the injuries sustained by the claimant and also after considering the evidence and materials on record, the Tribunal has awarded a just and reasonable compensation and hence, it does not warrant any interference by this court. Accordingly, the points are answered and the appeal fails.

12. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The award amount of Rs.52,000/- shall be paid by the owner of the tractor and trailer.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

mst



To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Thiruvannamalai.

2. The Section Officer,
V.R. Section,
Madras High Court, Chennai - 104.

+1cc to M/s.M.Malar, Advocate, S.R.No.11373

+1cc to M/s Sarvabhauman Associates, Advocate, S.R.No.11041

+1cc to Ms.R.Sreevidhya, Advocate, S.R.No.11642

CMA.No.2853 of 2012

SPD(CO)
RLP(13/09/2021)