



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.12.2020

Delivered on : 11.01.2021

CORAM:

THE HONOURABLE **MR. JUSTICE G. ILANGO VAN**

C.M.A. (MD) No.1348 of 2010

and

M.P (MD) No.1 of 2010

The Divisional Manager,
United India Insurance Co. Ltd.,
No.7-A, West Veli Street,
Madurai.

... Appellant/ 2nd Respondent

Vs.

1.Sri Murugan Egg Store thro' its
Proprietor D.Selvaraj
D.No.19/1, Tamil Sangam Road,
Madurai.

... 1st Respondent/Petitioner

2.V.Haridoss ... 2nd Respondent / 1st Respondent
(Ex-parte in the lower Court)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree dated 15.06.2007 made in M.C.O.P.No.205/2004 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Madurai.

For Appellant : Mr.N.Murugesan
For R1 : Mr.S.Satheshkumar
For R2 : Ex parte

JUDGMENT

This Civil Miscellaneous Appeal is filed against the Judgment and Decree, dated 15.06.2007 made in M.C.O.P.No.205 of 2004, on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Madurai.

2. The case of the first respondent/claimant before the Tribunal is that on 15.09.2003, the lorry bearing Registration No.TN-59-S-5575 was carrying eggs bought by the claimant, was driven by its driver namely K.Varadharasu from Namakkal to Madurai and when the lorry was nearing the place of occurrence, at about 2.30 p.m. the lorry bearing Registration No. TN-04-H-8545 driven



by its driver in a rash and negligent manner and dashed against the claimant vehicle. As a result of which, the lorry as well as the eggs were damaged. The total damages suffered by the claimant is estimated at Rs.2,73,413/- .

3.The second respondent/first respondent is the owner of the lorry bearing Registration No.TN-04-H-8545 and the appellant/ second respondent is the insurer. The appellant/second respondent contended before the Tribunal that the owner as well as the insurer of the lorry bearing Registration No.TN-59-S-5575 was not added as a party and so it suffers from non-joinder of necessary parties. It is also contended that the fact of the accident was not intimated to it and other details were denied conventionally.

4.Before the Tribunal, on the side of the claimant, one witness was examined as P.W.1 and six documents were marked as Ex.P.1 to Ex.P6. On the side of the respondents, no witness was examined and no documents were marked.

5.At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the second respondent/first respondent vehicle's driver and fastened the appellant with liability along with the owner to pay the compensation. Regarding the quantum, the Tribunal has fixed the same at Rs.2,55,240/-.

6.Challenging the same, the appellant/ Insurance Company is before this Court, mainly on the ground that there is no corroborative evidence to prove the evidence of P.W.1, with regard to the accident, the damage, no proper documents have been produced, with regard to the profit loss also no document was produced.

7.Regarding the manner of accident, no arguments was advanced on the side of the appellant. It is the evidence of P.W.1 to the effect that the accident took place due to rash and negligent driving on the part of the first respondent vehicle's driver, who came in the opposite direction and hit the lorry which was carrying the eggs. During the cross-examination, it was suggested to him that only the vehicle, which was carrying the claimant's eggs, was driven by its driver in a rash and negligent manner and invited the accident. But no document has been produced and no evidence has been examined. Ex.P1 is the copy of First Information Report which was registered on the basis of the complaint given by the driver of the lorry bearing Registration No.TN-59-S-5575, he has also mentioned that he was carrying the eggs belonging to the claimant who was running the company called as "D.S.R.Company". He would



state that the second respondent/ first respondent vehicle's driver drove the vehicle came in the opposite direction negligently and hit him.

8.Ex.P.3 is the rough sketch drawn by the Investigating Officer showing the place of occurrence which is noted on the eastern portion of the road. The egg carrying vehicle was proceeding north to south direction and the offending vehicle came from south to north direction. For that the vehicle the left side is on the west but here the accident took place on the eastern portion of the road which suggest that only the first respondent vehicle's driver came in the wrong side and hit the vehicle. So the manner of accident clearly shows that only the second respondent/first respondent vehicle's driver was rash and negligent in his driving. The finding of the Tribunal on this aspect requires no interference and accordingly, it is confirmed.

9.Regarding the compensation, the claimant has produced Ex.P4- purchase invoice which shows that the value of the eggs purchased was Rs.2,37,120/-. Ex.P5 is the pass book of the petitioner which shows that he was running current account in the name of the Sri Murugan eggs store in Madurai. Ex.P6 is the letter addressed to the claimant showing that he is running the eggs stores. So these documents would clearly establish the fact that the claimant was running egg stores in the place mentioned in the documents and in the address the lorry, was carrying the eggs purchased by him at Nammakkal. There is nothing on evidence to doubt his version. Simply because the photographs were not taken in the place of occurrence over the damages these documentary evidence cannot be doubted. There is no contra evidence on the side of the respondents to show that the damage suffered by the claimant is not as much as has been mentioned in the petition.

10.In the absence of evidence on the side of the appellant, the evidence of P.W.1 has to be accepted. So the first respondent/claimant claimed damage for the loss of income which was calculated at 0.50 paisa per egg. According to him, there was a loss of Rs.9,120/- and by purchasing the eggs at extra cost of Rs.0.10 paisa, he suffered Rs.18,240/- towards loss. But his claim of Rs.18,240 has been rejected by the Tribunal on the ground that no purchase documents were produced. The transport expenses awarded is Rs.4,000/- and loss of profit was estimated Rs.9,120/-. Totally a sum of Rs.2,55,240/- has been awarded as compensation. Therefore, I find that the assessment is just and fair and requires no interference. So the appeal deserves to be dismissed.

11.In the result, the Civil Miscellaneous Appeal is dismissed and the appellant/ Insurance Company is directed to deposit the entire award amount and interest at the rate of 7.5%, if not already deposited within a period of two months from the date of receipt of



copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the entire amount with cost and interest immediately, after filing proper petition before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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
(Principal Subordinate Judge)
Madurai.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.N.MURUGESAN, Advocate (SR-885[F] dated 18/01/2021)

C.M.A. (MD) No.1348 of 2010
11.01.2021

KMV(CO)
KK(22.01.2021) 4P 5C