



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	23.12.2020
DELIVERED ON	20.01.2021

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THE HONOURABLE MR.JUSTICE G.ILANGOVAN

C.M.A(MD) No.1528 of 2010

and

C.M.P. (MD) Nos.3 of 2010 and 1 of 2012

Branch Manager,
The United India Insurance
Company Limited,
North Raja Veethi,
Thiruvarur-602 001.

.. Appellant/2nd Respondent in M.C.O.P

vs.

1.Rajeswari

.. 1st Respondent/Petitioner in M.C.O.P

2.Chinnaiah

.. 2nd Respondent/1st Respondent in M.C.O.P

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 24.06.2009 passed in M.C.O.P.No.321 of 2006, on the file of the Motor Accident Claims Tribunal cum Sub Court, Pudukottai.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : No Appearance (for R1)

Mr.S.P.Maharajan (for R2)

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the Judgment and Decree, dated 24.06.2009 passed in M.C.O.P.No.321 of 2006, on the file of the Sub Judge, (Motor Accident Claims Tribunal), Pudukottai.

2.The case of the 1st respondent/claimant before the Tribunal is that on 23.09.2006 at about 07.00 a.m., when the 1st respondent/claimant was waiting for engagement for daily coolie work and she was taken the Tipper Lorry as a coolie, which belongs to the 2nd respondent/1st respondent vehicle bearing Registration



No.TN-55-E-7602 and when the Lorry was nearing the place of occurrence, the driver of the vehicle drove the same in a rash and negligent manner, as a result of which, the 1st respondent/claimant fell on the road and sustained injuries. She was taken to Pudukottai Hospital and took treatment as inpatient. In respect of the occurrence, the case in Crime No.99 of 2006 was registered on the file of the Namanasamuthram Police Station. Because of the accidental injuries, the 1st respondent/claimant was not in a position to carry her work as before. So, the 1st respondent/claimant approached the Tribunal, claiming compensation of Rs.7,00,000/- (Rupees Seven Lakhs Only).

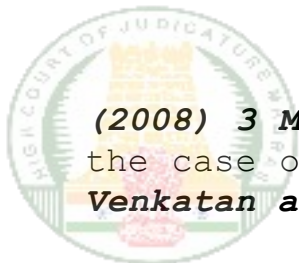
3.The case of the appellant/2nd respondent before the Tribunal is that the vehicle is a goods vehicle and permitted to carry only goods and violating the policy condition and as well as the Motor Vehicles Act, the 1st respondent/claimant was taken as a passenger for which, the appellant/Insurance Company is not liable to pay the compensation. With the regard to the occurrence, it is disputed that it arose, due to the negligence of the 2nd respondent/1st respondent's vehicle driver. The other things were denied conventionally.

4.Before the Tribunal, on the side of the 1st respondent/claimant, two witnesses were examined and nine documents marked. On the side of the 1st respondent/2nd respondent and the appellant/2nd respondent, one witness was examined and one document was marked.

5.At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident took place, due to the rash and negligent driving on the part of the 2nd respondent/1st respondent's vehicle and accordingly, the 2nd respondent/1st respondent and the appellant/2nd respondent were held liable to pay the compensation, which has fixed at Rs.80,000/- (Rupees Eighty Thousand only) along with interest at the rate of 7.5% p.a., by taking into account, the disability suffered by the 1st respondent/claimant.

6.Challenging the same, the present appeal has been preferred by the appellant/2nd respondent, mainly on the ground of liability stating that the driver of the offending vehicle was not owning proper driving license, but drove the heavy vehicle. Regarding the quantum also, dispute has been raised.

7.The 2nd respondent herein has contended that the driver was owned the proper driving license and there is no necessity for endorsement, since the offending vehicle was the light Motor vehicle. He would also rely upon the Judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Sri Annappa Irappa Nesaria @ Nesaragi and Others** reported in

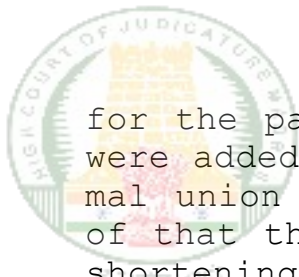


(2008) 3 MLJ 502 (SC) and the Judgment of the Madras High Court in the case of **Branch Manager, National Insurance Company Limited Vs. Venkatan and Another** reported in **(2008) 3 MLJ 781**.

8.Ex.R.1 is the copy of the Driving Licence, produced by the Regional Transport office, Pollachi, wherein, we find that, he was licensed to drive light motor vehicle and transport vehicle. The date of accident is 23.09.2006. The previous license expired on 19.06.2007 and light motor vehicle licence was in force from 16.09.1997. So, it is seen that on the date of the occurrence, the offending vehicle driver was permitted to drive light motor vehicle. According to the appellant/2nd respondent, the vehicle is the heavy goods carriage vehicle. Ex.P.9 is the copy of the Registration Certificate, wherein, we find that the unladen weight of the vehicle is mentioned as 7270 kgs. So, it is seen that it is below 7,500 kgs, which means that it is a light motor vehicle. Even though it is a goods carriage, a person holding light motor vehicle is entitled to drive the goods carriage. So, the offending vehicle driver was owning license for driving a light motor vehicle is entitled to drive the offending vehicle also, since it is below 7,500 kgs. So, the contention on the part of the appellant/2nd respondent on this aspect cannot be accepted. But the another defect is that there is no evidence to show that the 1st respondent/petitioner travelled in the vehicle as an employee or coolie. The First Information Report was registered on the basis of the complaint given by the 1st respondent/claimant herself, wherein, she has stated that she was working as a daily wager in a Stone Quarry near Lembalagudi and on the date of the occurrence, she was waiting in the Bus Stop and at the time, the offending vehicle came and she travelled in the vehicle. So, this shows that only for the purpose of going to the work spot, the 1st respondent/claimant travelled in the goods vehicle, but quite contra, she has deposed that she was working as a load man in the Lorry and absolutely there is no evidence. So, the story has been projected by the 1st respondent/claimant to show as if, she travelled in the vehicle as a load man. Even if she states that she was working as a load man in the vehicle, she cannot be permitted to travel in the cargo area. So, it is not only violation of policy condition, but the violation of Motor Vehicle Rules is also there. So, the appellant/Insurance Company cannot be fastened with any liability.

9.Regarding the quantum, no argument was advanced by the learned counsel on either side.

10.The Tribunal by taking into account, the disability suffered by the 1st respondent/claimant and assessment made by the Doctor-P.W.2, fixed the partial permanent disability at 35% by ~~adoption of the~~ ^{adoption of the} average basis and awarded Rs.30,000/- as compensation



for the partial permanent disability and the conventional amounts were added. Reading of the evidence of P.W.2 shows that there was mal union bones on the right leg below the knee portion, because of that there is 3.4 inches shortening of leg. When there is a shortening of the leg, naturally, the disability suffered by the 1st respondent/claimant at 35% cannot be considered to be excessive. So, the same may be taken into account as correct. So, the compensation awarded by the Tribunal also requires no interference.

11.In the result, the Civil Miscellaneous Appeal is allowed. The quantum of the award passed by the Tribunal in M.C.O.P.No.321 of 2006, dated 24.06.2009 is confirmed. The owner, the 2nd respondent herein is directed to deposit the entire award amount along with 7.5% p.a from the date of filing till the date of realization, within a period of two months from the date of receipt of a copy of this judgment. On such deposit being made, the 1st respondent/claimant is permitted to withdraw the same. The amount deposited by the appellant/Insurance Company, if any, is permitted to refunded to them. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sjj

To

1.The Sub Judge,
(Motor Accident Claims Tribunal), Pudukottai,

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

+1 CC to Mr.S.P.MAHARAJAN, Advocate (SR-1560[F] dated 21/01/2021)

Judgment Made In
C.M.A(MD) No.1528 of 2010
20.01.2021

KM (15.02.2021) 4P 5C