



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.327 of 2011

and

M.P(MD)No.1 of 2011

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United India Insurance Co. Ltd.,
through its Branch manager,
76, V.O.C.Street,
First Floor, Post Box No.28,
Karaikudi-1.

vs.

.. Appellant/2nd Respondent

1.Arumugam

.. 1st Respondent/Petitioner

2.S.P.Pushparajan

.. 2nd Respondent/1st Respondent

3.State Express Transport Corporation Ltd.,
through its Branch Manager,
By-Pass Road,
Tirunelveli.

.. 3rd Respondent/3rd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the award passed in M.A.C.O.P.No.11/2006, dated 28.02.2008 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Sankarankovil.

For Appellant : Mrs.Vijayakumari Natarajan
for Mr.S.Natarajan

For R1 : Mr.S.S.Thesigan

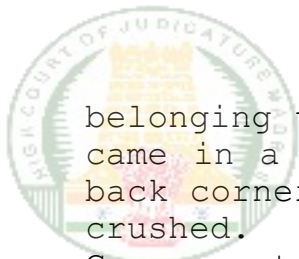
For R2 : No appearance

For R3 : Royce Immanuvel

J U D G M E N T

This appeal arises out of the award passed by the Motor Accident Claims Tribunal (Subordinate Judge), Sankarankovil in M.A.C.O.P.No.11 of 2006, wherein, against the claim of Rs.10,00,000/- the Tribunal awarded a sum of Rs.6,00,000/- in favour of the first respondent herein.

2. This is a case of injury. According to the claimant, on 15.06.2003 he was travelling in a bus owned by the Transport Corporation bearing Registration No.TN-1-N-6284 along Trichy - Madurai main road. It is alleged that when the bus was proceeding near Kottampatti hotel, a Van bearing Registration No.TCT-7077



belonging to the second respondent herein insured with the appellant came in a rash and negligent manner and hit against the right side back corner of the bus, in which, the right hand of the claimant was crushed. Immediately, he was taken to Annal Gandhi Memorial Government Hospital, Trichy and his right hand below elbow was amputated and he was inpatient from 15.06.2003 to 30.07.2003. He would further state that he was 21 years at the time of accident and he was doing business in selling Plastic house hold utensils and earning Rs.300/- per day. After the accident, he was not able to go for work and he is suffering.

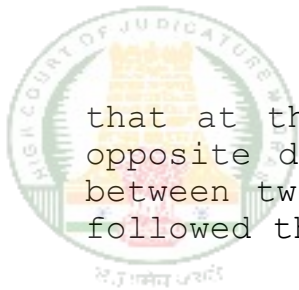
3. The contention of the appellant before the Tribunal was that the injured was putting his right hand on the rod and he invited the accident and hence, the Insurance Company is not liable to pay compensation. It is also stated that the claim is excessive and exorbitant and they disputed the manner of accident as pleaded by the claimant.

4. During trial, the claimant examined himself as P.W.1 and marked Ex.P1-FIR, Ex.P2-wound certificate, Ex.P3-Report of the Motor Vehicle Inspector. On the side of the appellant, no oral and documentary evidence was adduced to substantiate their defence. So, the Tribunal came to the conclusion that the driver of the Van was responsible for the accident.

5. P.W.1 in the course of evidence has stated that his right hand was amputated in view of the crushed injury caused in the accident. Ex.P-2 wound certificate corroborates the evidence of P.W.1. Ex.P3- is the discharge summary issued by the Annal Gandhi Memorial Government Hospital, Trichy. Ex.P7 bills for spending medical expenses. P.W.2-Doctor Thiru.Mathiyalagan stated that the injured has sustained 95% disability. Ex.P-11 is the disability certificate. When the claimant was referred to Medical Board, they assessed the disability at 80% and the certificate was marked as Ex.P-9. The Tribunal taking the disability as 80% awarded compensation of Rs.6,00,000/-.

6. Mrs.Vijayakumari Natarajan, learned counsel appearing for the appellant submitted that the disability fixed at 80% is without assessing the relevant provisions as applicable to the Part-II Schedule I of Workmen Compensation Act, 1923. According to the learned counsel, the quantum awarded by the Tribunal is on the higher side and the defence taken by the appellant that the injured also contributed the accident has not been considered by the Tribunal. I am not able to agree with the submission of the learned counsel for the appellant.

7. In the instant case, Ex.P3- the report of the Motor Vehicle Inspector shows that the driver of the Van dashed against the bus, claimant sustained injury. It is a well settled law



that at the time of over taking the vehicle or proceeding in the opposite direction, the driver shall leave minimum 2 feet distance between two vehicles to avoid accident. Had the driver of the van followed the distance this accident, would not have taken place.

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8. The evidence of P.W.1 and P.W.2 would reveal that the right hand below elbow of the claimant was amputated when he was only 21 years old. The Tribunal after analysing the testimony of P.W.1, P.W.2 and Ex.P9 has awarded a sum of Rs.4,89,600/- towards loss of income, taking the income of injured as Rs.3,000/- per month. In addition, Rs.50,000/- was awarded for pain and suffering, Rs.20,000/- for extra nourishment, Rs.5,400/- for transportation and loss of articles and Rs.35,000/- towards medical expenses.

9. I find no ground to interfere with the conclusion reached by the Tribunal, and hence, the appeal fails and it is dismissed. The appellant/Insurance company and the second respondent are directed to deposit the entire award amount with accrued interest and costs as directed by the Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant is permitted to withdraw the award amount by making necessary application before the Tribunal, less the amount already withdrawn, if any. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal
(Subordinate Judge), Sankarankovil.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.S.NATARAJAN, Advocate (SR-4728[F] dated 12/02/2021)

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KK(27.05.2021) 3P 5C

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