



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 16.03.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.228 of 2010

and

M.P. (MD) No.1 of 2010

WEB COPY

The New India Assurance Co Ltd.,
No.3, Main Road,
Dindigul.

.. Appellant/2nd Respondent

vs.

1.Gopinath

.. 1st Respondent/Petitioner

2.Ayyappan

.. 2nd Respondent/1st Respondent

(2nd Respondent was set exparte in the Tribunal. Hence notice has to be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 31.03.2009 and made in M.C.O.P.No.201 of 2006 on the file of the Motor Accident Claims Tribunal (Sub-Judge), Kulithalai.

For Appellant	:Mr.J.S.Murali
For R1	:Mr.V.Kannan
For R2	: Ex-parte

J U D G M E N T

The Insurance Company has preferred this appeal challenging the award passed by the Motor Accident Claims Tribunal (Sub-Judge), Kulithalai in M.C.O.P.No.201 of 2006.

2. The facts of the case in brief:-

The first respondent herein filed a claim petition seeking compensation of Rs.5,00,000/- for the injuries sustained by him in the accident that had taken place on 28.01.2006. According to him, on the date of accident, he was travelling as pillion rider in a motorcycle bearing Registration No.TN-57-J-5437 on Dindigul-Palani main road. At that time, a Mahindra Van bearing Registration No.TN-57-C-6478 came in a rash and negligent manner and dashed the motorcycle. As a resul of which, he sustained multiple grievous injuries, immediately, he was taken to Government Hospital, Dindigul and thereafter, he was admitted in CSI Mission General Hospital, Uraiyur, Trichy District on the same day and he was discharged on 13.02.2006. It is further stated that operations and other treatments were done in CSI hospital. The claimant further stated that he was studying first year Polytechnic at Karur. Since he become disabled and he could not continue his studies and hence, he is entitled for compensation.



3. The appellant resisted the claim petition disputing the averments made in the claim petition. It is stated that the accident occurred due to the negligence of the driver of the two-wheeler. The owner of the Van did not intimate the accident and furnished the particulars with regard to RC Book, driving licence, policy and permit to the respondents and the driver of the van did not have valid and effective driving licence and hence, no liability can be fastened on the Insurance Company.

4. Before the Tribunal, the claimant examined two witnesses and marked 5 documents. The appellant examined one Sivakumar as R.W.1 and marked Ex.R1. After analysing the evidence adduced by the parties, the Tribunal came to the conclusion that the accident had happened due to the negligence of the driver of the van and awarded compensation of Rs.1,25,300/- with 6% interest. Questioning the award, the present appeal has been filed.

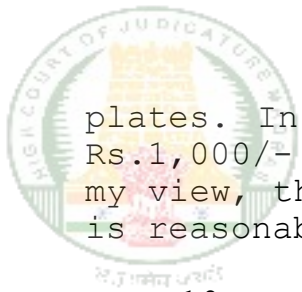
5. Mr.J.S.Murali, learned counsel for the appellant would argue that the Tribunal should not have directed the appellant to pay the compensation at first and thereafter, recover from the owner of the vehicle, since appellant has no liability at all. It is the submission of the learned counsel for the appellant that the insured has allowed the driver to drive the vehicle, who had no valid driving licence at the time of accident and the award of the tribunal is excessive.

6. Per contra, the learned counsel appearing for the respondent made a submissions in support of the finding of the Tribunal and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the parties and perused the materials available on record.

8. In the present case, the claimant was a minor aged about 17 years at the time of accident. According to him, he was studying Ist year Polytechnic at Karur and he sustained injury in view of the negligence on the part of the driver of the Van. So, to prove the negligence, he examined himself as P.W.1. In his evidence, he has narrated the manner of accident. In support there of, he produced Ex.P1-FIR, which shows that criminal case was registered against the driver of the Van. No contra evidence was produced by the appellant. So, the Tribunal held that the driver of the van caused the accident.

9. The claimant has stated that he has suffered multiple fracture in the accident. P.W.2 Dr.Selvaraj assessed his disability and issued disability certificate Ex.P4 stating that the disability at 44%. Ex.P5 is the X-ray. However, the Tribunal has taken the disability at 40% and awarded Rs.80,000/- by granting Rs.2,000/- per percentage. Based on Ex.P3 medical bills, Rs.23,800/- was awarded for removal of



plates. In addition Rs.5,000/- was awarded for pain and suffering, Rs.1,000/- for extra nourishment and Rs.500/- for transportation. In my view, the award of the Tribunal is reasonable. Rs.1,25,300/-

10. It is contended by the appellant that the driver did not have valid driving licence. To establish the same, the appellant examined R.W.1 and marked Ex.R1. The Tribunal found that though the driver had a licence to drive LMV, he was not permitted to drive commercial vehicle. Hence, the trial Court arrived at finding that there was a violation of policy condition. Taking note of the fact that the claimant is a third party, the Tribunal has rightly directed the appellant to satisfy the award amount and thereafter recover from the owner of the vehicle.

11. I find no reasons to interfere with the conclusion reached by the Tribunal. In that view, the Civil Miscellaneous Appeal is dismissed, as devoid of merits. The appellant/Insurance Company is directed to deposit the entire award amount and thereafter, recover from the owner of the vehicle, with accrued interest and costs, 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 claimant/first respondent is permitted to withdraw the award amount, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Subordinate Judge

The Motor Accident Claims Tribunal (Sub Court)
Kulithalai.

2.The Record Keeper, (2C)

Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate (SR-11657[F] dated 17/03/2021)

+1 CC to M/s.V.KANNAN, Advocate (SR-11878[F] dated 17/03/2021)

C.M.A(MD) No.228 of 2010

16.03.2021

DKS (CO)

KB(28.04.2021) 3P 6C