



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.749 of 2010

and

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

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The New India Assurance Company Limited
Rep.by its Branch Manager
Namakkal

... Appellant/4th Respondent

-vs-

1.P.Saravanakumar

...Respondent No.1/Petitioner

2.N.Subramanian

...Respondent No.2/1st Respondent

3.The United India Insurance Co. Ltd.

Rep.by its Divisional Manager

Thanjavur

...Respondent No.3/2nd Respondent

4.Kesavan

...Respondent No.4/3rd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 29.01.2003 in M.A.C.T.O.P.No.52 of 2000, on the file of the Motor Accidents Claims Tribunal (Additional Sub Judge), Kumbakonam.

For Appellant : Mr.B.Vijay Karthikeyan

For Respondents : Mr.V.Chandrasekar for R1
R2 & R4 - Dismissed
vide Court order dated 16.02.2012
Mr.K.A.Thirumalaiappan for R3

J U D G M E N T

The fourth respondent in M.A.C.T.O.P.No.52 of 2000, on the file of the Motor Accident Claims Tribunal / Additional Sub Court, Kumbakonam, has come up with this appeal challenging the Award of the Tribunal, dated 29.01.2003, wherein the Tribunal has held the appellant and the third respondent - Insurance Companies are equally liable to pay compensation.



2. The facts of the case in brief are that the first respondent herein filed a claim petition claiming compensation of Rs.10,00,000/-. According to the claimant, he was working as Cleaner in a Lorry bearing registration No.KL9 A4014. On 06.06.1994, at about 08.00 p.m. the Lorry was parked in Chennai Harbour to load container and the claimant was cleaning the windscreen of the Lorry and another Lorry bearing registration No.TCE9959 owned by the fourth respondent herein was parked about 5 Feet from the Lorry in which the claimant was carrying on cleaning works. At that time, a Lorry bearing registration No.TNS8736 owned by the second respondent came in a high speed and hit backside of a Lorry bearing registration No.TCE9959, due to the hit, the Lorry moved forward and dashed against the Lorry in which the claimant was carrying on cleaning works. In the accident, the claimant's right leg got crushed. Immediately, he was taken to Government Royapettah Hospital for treatment and thereafter, he took treatment in a Private Hospital. It is further stated that the claimant spent more than Rs.5,00,000/- for treatment. He was 26 years old at the time of accident and his salary was Rs.3,000/- per month.

3. The owners and insurers of the Lorries bearing registration No.TNS8736 and TCE9959 were the respondents in the claim petition. Both owners remained *ex parte* and the claim was contested by the Insurance Companies disputing the manner of accident and their liability to pay compensation.

4. After analyzing the evidence adduced by the parties, the Tribunal came to the conclusion that both the drivers of both Lorries bearing registration No.TNS8736 and TCE9959 were equally responsible for the accident and accordingly, awarded compensation. Challenging the same, the present civil miscellaneous appeal has been filed.

5. Mr.B.Vijay Karthikeyan, learned counsel appearing for the appellant - Insurance Company, would contend that a criminal case was registered against the driver of the Lorry bearing registration No.TNS8736 and he also paid fine amount and hence, the findings of the Tribunal making the appellant - Insurance Company to pay compensation is unsustainable.

6. On the other hand, the learned counsels appearing on behalf of the respondents 1 and 3 made submissions in support of the conclusion reached by the Tribunal.

7. Heard the rival submissions and perused the materials available on record.



8. It is not in dispute that the claimant had sustained injury in the accident that had taken place on 06.06.1994. It is also equally not disputed that the claimant was a Cleaner in a Lorry bearing registration No.KL9 A4014 and at the time of the accident, he was cleaning the windscreen by standing on the bumper of the said Lorry. The evidence given by the claimant would show that the Lorry bearing registration No.TNS8736 came in a high speed and rammed the Lorry bearing registration TCE9959 and in that process, the Lorry moved forward and dashed against the Lorry bearing registration KL9 A4014, on account of which, the claimant, who was carrying on cleaning works, sustained injuries. It is true that criminal proceedings were initiated against the driver of the Lorry bearing registration No.TNS8736 and he also found guilty by the Criminal Court. The Tribunal finding that the Lorry bearing registration TCE9959 was not properly parked and no tyre blocks were placed while parking the Lorry, came to the conclusion that the driver of the Lorry bearing registration TCE9959 is also equally responsible for the accident. Therefore, I am of the view that the findings of the Tribunal in this regard do not warrant any interference of this Court and the same are hereby confirmed.

9. Insofar as quantum is concerned, the findings of the Tribunal are that the claimant was 26 years at the time of the accident and he sustained 56% disability. There was a reduction of 14 cm of his right leg and he also spent Rs.80,000/- for treatment. So, the award amount of Rs.1,95,000/- cannot be said to be excessive or exorbitant.

10. In the light of the above facts, I do not find any merit in this civil miscellaneous appeal and the same is therefore dismissed. Since the appeal is dismissed, the appellant - Insurance Company is directed to deposit the entire award amount 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 Judgment. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// 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 Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

- 1.The Additional Sub Judge,
Motor Accidents Claims Tribunal,
Kumbakonam.
- 2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.B.VIJAYAKARTHIKEYAN, Advocate (SR-5286[F] dated 16/02/2021)

+1 CC to Mr.V.CHANDRASEKAR, Advocate (SR-5541[F] dated 17/02/2021)

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