



C.M.A.(MD)Nos.1394 & 1395 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On : 28.11.2022

Delivered On : 23.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)Nos.1394 & 1395 of 2009

C.M.A.(MD)No.1394 of 2009

The Divisional Manager,

The New India Assurance Company Limited,

Main Road, Dindigul.

.. Appellant /2nd Respondent

Vs.

1.K.Manickam

... 1st Respondent / Petitioner

2.C.Shanmugam

... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 31.12.2007, made in M.C.O.P.No.279 of 2005, on the file of the Motor Accident Claims Tribunal – Additional District cum Sessions Judge - Fast Track Court, Dindigul.

For Appellant

: Mr.J.S.Murali

For Respondents

: Mr.H.Lakshmi Shankar for R2

: No appearance for R1



C.M.A.(MD)Nos.1394 & 1395 of 2009

C.M.A.(MD)No.1395 of 2009

M.s. New India Assurance Company Limited,
82, Dr.Thirumalai Plaza, 1st Floor,
New Tharapuram Road, Palani. ... Appellant /2nd Respondent

Vs.

1.M.Manimegalai ... 1st Respondent / Petitioner
2.C.Shanmugam ... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 31.12.2007, made in M.C.O.P.No.281 of 2005, on the file of the Motor Accident Claims Tribunal – Additional District cum Sessions Judge - Fast Track Court, Dindigul.

For Appellant : Mr.J.S.Murali
For Respondents : Mr.H.Lakshmi Shankar for R2
: No appearance for R1

COMMON JUDGMENT

C.M.A(MD)No.1394 of 2009 has been filed against the award, dated 31.12.2007, made in M.C.O.P.No.279 of 2005, on the file of the Motor Accident Claims Tribunal – Additional District cum Sessions Judge -Fast Track Court, Dindigul. The appellant herein is the second respondent,



C.M.A.(MD)Nos.1394 & 1395 of 2009

the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. C.M.A(MD)No.1395 of 2009 has been filed against the award,dated 31.12.2007, made in M.C.O.P.No.281 of 2005, on the file of the Motor Accident Claims Tribunal – Additional District cum Sessions Judge -Fast Track Court, Dindigul. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

3. Two more cases, in M.C.O.P.Nos.92 of 2005 and 132 of 2005, that arise out of the same accident along with the said M.C.O.P.Nos.279 of 2005 and 281 of 2005, were taken up for joint trial by the Tribunal and a common Judgment was pronounced by the Tribunal.

4. A Brief substance of the claim petition, in M.C.O.P.Nos.279 and 281 of 2005, is as follows:

On 03.05.2005, at about, 12.45 pm., when the petitioner and others were standing at the Chockkalingapuram bus stop, a bus bearing Registration No.TN-39-M-2552 driven by its driver came in a rash and



C.M.A.(MD)Nos.1394 & 1395 of 2009

negligent manner, overtaking a mini auto, dashed against the petitioner and others and capsized. The petitioner in M.C.O.P.No.279 of 2005 sustained injuries, he was admitted in Dindigul City Hospital and he took treatment as inpatient for a period of one month. The petitioner claimed a sum of Rs.5,00,000/- as compensation.

5. In the same accident, the petitioner in M.C.O.P.No.281 of 2005 sustained injuries, he was admitted in Dindigul city hospital and he took treatment as inpatient for a period of one month and he claimed a sum of Rs.5,00,000/- as compensation.

6. Brief substance of the counter filed by the second respondent in both the petitions in M.C.O.P.Nos.279 and 281 of 2005, is as follows:

The petitioners travelled in the goods vehicle as gratuitous passengers and that there is policy violations. The age, profession and income are all denied. The claim is excessive. The second respondent is not liable to pay compensation.

7. In the joint trial, 7 witnesses were examined and 28 documents were marked, on the side of the claimants. 1 witness was examined and 3



C.M.A.(MD)Nos.1394 & 1395 of 2009

documents were marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.60,000/- in both the claim petitions to be paid by the second respondent on behalf of the first respondent.

8. Against the order, the second respondent / appellant has filed both the appeals on the following grounds:-

The Tribunal failed to consider the violation of policy conditions. The Tribunal failed to consider that the claimants travelled in a goods vehicle along with 8 others as passengers. The Tribunal failed to consider Ex.A1-copy of F.I.R, lodged by one of the co-passenger-Manimegalai, who has deposed that more than 8 persons travelled in the goods carrier. The Tribunal failed to consider the evidence of R.W.1 – Balasubramani. The Tribunal is wrong in awarding Rs.20,000/- for disability, Rs.10,000/- towards loss of earning capacity, Rs.5,000/- towards loss of income and the total award is excessive.

9. On the side of the appellant, it is stated that more than 8 persons travelled in the vehicle as gratuitous passengers in the goods vehicle. R.W.1 was examined and Ex.R1 and Ex.R2 were marked. The



C.M.A.(MD)Nos.1394 & 1395 of 2009

Tribunal wrongly fixed the liability on the insurance company. A Division Bench of this Court reported in 2018-2-TNMAC-731 (DB) (Bharati AXA General Insurance Co.Ltd., V. Aandi and others) is cited, wherein, it is stated as follows:-

“In instant case, the deceased and injured claimants travelled in goods vehicle as a Marriage party. The Tribunal is not right in directing insurer to pay and recover. Mere difficulty in realizing award amount from the owner of the vehicle, cannot impel Court to do something against provisions of Statutes and the Apex Court dictum, and the award as against insurer is set aside.”

10. On the side of the second respondent-owner of the vehicle, it is stated that premium was paid for cleaner, owner and for 3 other persons and the policy was inforce, number of passengers cannot be decided on the basis of the F.I.R. The evidence of R.W.2 reveals that premium for 2 persons under the Workman Compensation Act was paid. The claimants travelled as owners of the goods. In the same accident, the driver of the vehicle filed a petition under the Workman Compensation Act, in CMA(MD)No.454 of 2008, this Court has confirmed the award.



C.M.A.(MD)Nos.1394 & 1395 of 2009

11. It is seen that the driver of the vehicle, who got injuries in the very same accident has filed a claim petition before the Commissioner of Labour and an appeal was filed before this Court in CMA(MD)No.454 of 2008, wherein, this Court has held that the insurance policy is liable to pay compensation for the driver.

12. F.I.R was lodged by one Manimegalai, wherein, she has given a statement that she travelled as an owner of the goods. Whether the claimants in this case were standing on the bus stop or travelling in the van is vague. P.W.1 has deposed that when he was standing for the bus, van came in a rash and negligent manner and hit against him. F.I.R is not a conclusive proof. The said Manimegalai was not examined as witness on the side of the respondents. There is no rebuttal evidence on the side of the respondents. In the above circumstances, it is decided that the injured were standing at the bus stop at the time of accident.

13. R.W.1 has deposed that the policy was inforce at the time of accident. Premium was paid for driver, cleaner and 3 owners of goods and premium for 2 persons for a claim under the Workman Compensation Act was also paid. The respondents failed to prove that the claimants travelled



C.M.A.(MD)Nos.1394 & 1395 of 2009

as unauthorised passengers. Admittedly, premium was paid for 3 persons, who travelled as owners of goods. Premium for 2 persons for a claimant under Workman Compensation Act was also paid. The driver of the mini lorry, who sustained injury in the same accident, has got his compensation. Considering the above said points, it is decided that the insurance company is liable to pay compensation.

In M.C.O.P.No. 279 of 2009 (CMA(MD)No.1394 of 2009):

14. The claimant was examined as P.W.3. Wound certificate was marked as Ex.P7. Medical bills were marked as Ex.P9. The Doctor-Vijayakumar was examined as P.W.7. It is seen the Tribunal has awarded Rs.10,000/- towards pain and sufferings, Rs.15,000/- towards medical expenses, Rs.20,000/- towards permanent disability, Rs.5,000/- towards temporary loss of income and Rs.10,000/- towards loss of earning capacity and totally awarded Rs.60,000/- as compensation, which are all reasonable.

In M.C.O.P.No. 281 of 2009 (CMA(MD)No.1395 of 2009):

15. The claimant was examined as P.W.4. Wound certificate was marked as Ex.P10. Receipts for medical expenses was marked as Ex.P11. Discharge summary was marked as Ex.P12. Doctor was examined as P.W.7



C.M.A.(MD)Nos.1394 & 1395 of 2009

and he assessed the disability at 46%. He has further deposed that the claimant has to undergo another surgery, which may require Rs.20,000/-.

Disability certificate was marked as Ex.P27. X-Ray was marked as Ex.P28.

16. The Tribunal has awarded Rs.10,000/- towards pain and sufferings, Rs.5,000/- towards medical expenses, Rs.30,000/- for permanent disability, Rs.5,000/- towards loss of income, Rs.10,000/- towards loss of earning capacity and has awarded a total sum of Rs.60,000/- as compensation. Considering the period of accident and considering the facts and circumstances of the case, it is decided that the award fixed by the Tribunal is reasonable.

17. Hence, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal. This Appeals are dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is hereby confirmed.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.60,000/- (if not already deposited) in both the appeals together with interest at the rate of 7.5% per annum from the date



C.M.A.(MD)Nos.1394 & 1395 of 2009

of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / Insurance Company, the first respondent herein / claimant in both the appeal is permitted to withdraw the entire award amount along with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimant in both the appeals is not entitled for interest for the default period, if there is any.

23.12.2022

Index : Yes/No
Internet : Yes/No
Ls

To

1.The Additional District cum Sessions Judge

Motor Accident Claims Tribunal –

Fast Track Court, Dindigul.

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.



WEB COPY



C.M.A.(MD)Nos.1394 & 1395 of 2009



WEB COPY



C.M.A.(MD)Nos.1394 & 1395 of 2009

R. THARANI, J.

Ls

Pre-delivery Judgment made in
C.M.A.(MD)Nos.1394 & 1395 of 2009

23.12.2022