BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.11.2022

Pronounced on : 07.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.510 of 2009

The Manager,
Professional Couriers
Erode
No.887, Kamaraj Street,
Erode - 638 001,
Erode District. ...Appellant/ 1st Respondent

Vs

1.K.Alagarsamy ... 1st respondent / Petitioner

2.The Manager,
The National Insurance Company,
No.66, Perundurai Road,
Erode 638 001,
Erode District. ... 2nd Respondent / 2nd respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 16.12.2005 made in M.A.C.O.P.No.562 of 2004 by the learned Sub-Ordinate Judge, presiding over the Motor Accidents Claims Tribunal, Karur.

For Appellant : Mr.Haja Mohideen Gisthi

For R1 : Mr.C.George Poul Antony

For R2 : Mr.D.Sivaraman

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.A.C.O.P.No.562 of 2004 by the learned Sub-Ordinate Judge, presiding over the Motor Accidents Claims Tribunal, Karur. The appellant is the first respondent, first respondent herein is the claimant and second respondent is the second respondent in the claim petition.

2.Brief substance of the claim petition is as follow:

On 22.04.2004, at about 2 a.m., when the petitioner was sleeping inside the VKA Petrol Bunk situated at Karur -Salem - Madurai road, a van bearing registration number TN 33 Q 3209 driven by its driver in a rash and negligent manner dashed against the petitioner. He sustained injuries and he was admitted in Karur Amaravathi Hospital as inpatient and he took treatment from 22.04.2004 till 02.05.2004. Subsequently, he took treatment as out patient. The petitioner was working in Selvi Cycle Mart as a driver and was earning Rs.4,500/- per month. Due to the permanent disability, he was not able to continue his work. The petitioner claimed compensation and filed this petition.

3.Brief substance of the counter filed by the first respondent is as follows:

The manner of accident is wrongly narrated in the petition. The petitioner is responsible for the accident. The profession, income and injuries, medical expenses, disability are all denied. The claim is excessive. The van driver was having valid driving licence. The vehicle was insured with the second respondent. The first respondent is not liable to pay compensation.

4.Brief substance of the counter filed by the second respondent is as follows:

The manner of accident stated in the petition is wrong. The place of occurrence is wrongly mentioned. The age, income, profession of the petitioner are all denied. The nature of injuries, medical expenses are all denied. The claim is excessive.

5.Two witnesses were examined, 12 documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.1,23,000/- as compensation to be paid by the first respondent.

6.Against the award, the first respondent filed this appeal on the following grounds:

The Tribunal is wrong in deciding that the second respondent is not liable to pay compensation, despite the fact that the insurance policy was valid at the time of accident. The Tribunal is wrong in giving a finding that the petrol bunk is not a public place. The Tribunal failed to consider that the second respondent did not raise any point as to the place of occurrence in the counter. The Tribunal failed to consider that a petrol bunk is always kept open and that the general public are free to have access to fill petrol and it has to be considered as a public place. The Tribunal failed to consider that the vehicle ought to have been driven in a slow manner for reaching the petrol bunk. The Tribunal failed to consider that the claimant was not an employee of the petrol bunk and that he had no reason to sleep within the premises of the petrol bunk. Apart from the evidence of the claimant, there was no independent evidence to prove that the driver of the van, was rash or negligent. The Tribunal failed to consider that the claimant has not filed any document to prove the income. The Tribunal failed to consider that the percentage of disability assessed by the Doctor is on the higher side. The award is excessive.

7.On the side of the appellant it is stated that the insurance company is liable to pay compensation and that the place of occurrence is a public place. On the side of the second respondent it is stated that the place of occurrence is not a public place and that the insurance company is not liable to pay compensation.

8.A judgment reported in **1999 ACJ 1520** in the case of **United India Insurance Co. Ltd. vs Parvathi Devi And Ors,** is referred, wherein it is held as follows:

> *"16. The definition of 'public place' is very wide. A perusal of the same reveals that the public at large has a right to access though that right is regulated or restricted. It is also seen that this Act is beneficial legislation, so also the law of interpretation*

has to be construed in the benefit of public. In the overall legal position and the fact that if the language is simple and unambiguous, it has to be construed in the benefit of the public, we are of the view that the word 'public 'place', wherever used as a right or controlled in any manner whatsoever, would attract Section 2 (24) of the Act. In view of this, as stated, the private place used with permission or without permission would amount to be a 'public place'.

17. In view of what we have discussed above, we hold that the expression 'public place' for the purpose of Chapter VIII of the Motor Vehicles Act, 1939 will cover all places including those of private ownership where members of the public have an access whether free or controlled in any manner whatsoever."

The judgment cited above is applicable to this case. Hence it is decided that the place of occurrence is a public place.

9.Considering the fact that a petrol bunk is accessible by the general public, the claim of the insurance company is not reasonable. There is nothing to prevent anybody entering the petrol bunk. The contention of the insurance company is not reasonable.

10.Though the insurance company has raised a question regarding the validity of the driving licence, the insurance company has not chosen to examine any witness or marked any documents. Both the appellant and the insurance company failed to prove that the driver of the van was not having any driving licence.

11.The copy of the FIR was marked as Ex.P1. Copy of the charge sheet was marked as Ex.P2. Copy of the rough sketch was marked as Ex.P3, Copy of the MVI report was marked as Ex.P5. Copy of the judgment of the criminal Court was marked as Ex.P6. On the basis of the evidence of P.W.1 and on the basis of Ex.P1 to Ex.P5 and Ex.P6, it is decided that the van driver is responsible for the accident.

12.The insurance policy is valid at the time of accident. The injured is a third party. Hence the insurance company cannot be exonerated.

13.On the side of the claimant it is stated that the claimant sustained permanent disability. Copy of the wound certificate was marked as Ex.P4. Copy of the medical report was marked as Ex.P7. Case sheet was marked as

Ex.P8. Prescriptions were marked as Ex.P9. Disability certificate was marked as Ex.P11. X-ray was marked as Ex.P12. P.W.2 has deposed that the left side rib bone Nos.4,5 and 6 were fractured. P.W.2 assessed the disability as 20%.

14.The Tribunal has awarded Rs.35,000/- towards injuries and Rs. 20,000/- towards disability. Awarding two different amount for the same injuries is not reasonable. Hence it is decided that for 20% disability, the claimant is entitled to Rs.40,000/- as compensation.

15.The Tribunal has awarded Rs.20,000/- towards pain and sufferings, Rs.5,000/- towards transport and extra nourishment and Rs.13,000/- towards medical expenses, which are all reasonable. The amount awarded towards loss of amenities is excessive. Hence, the same is reduced to Rs.22,000/-,

Hence, the award is calculated as below:

For disability	-	Rs.40,000/-
Medical expenses	-	Rs.13,000/-
For pain and sufferings	-	Rs.20,000/-
Transport and extra nourishment	-	Rs. 5,000/-

loss of amenities	-	Rs.22,000/-

Total	-	Rs.1,00,000/-

Hence it is decided that the claimant is entitled to Rs.1 Lakh as compensation. Hence it is decided that the insurance company is liable to pay compensation to the claimants and the appeal is liable to be allowed.

16.Accordingly, this Civil Miscellaneous Appeal is allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.1,23,000/- to Rs.1,00,000/- (Rupees One Lakh only) which shall carry interest at the rate of 7.5% per annum.

(ii) The second respondent / Insurance Company is directed to deposit the entire compensation of Rs.1,00,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.A.C.O.P.No.562 of 2004 before the learned Sub-Ordinate Judge, presiding over the Motor Accidents Claims Tribunal, Karur. 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 second respondent/ Insurance company, the first respondent herein/ claimant is permitted to withdraw the entire compensation amount of Rs.1,00,000/- (Rupees One Lakh only) with proportionate interest and cost.

07.12.2022

Index: Yes / No
Internet : Yes / No

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To

1.The Sub-Ordinate Judge /Motor Accidents Claims Tribunal, Karur.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

R. THARANI, J

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