



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 19.01.2022

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.1229 of 2014

and

M.P. (MD) No.1 of 2014

The Branch Manager,
New India Assurance Company Limited,
Tuticorin.

...Appellant/3rd Respondent

Vs.

1.Veerapandiyan

...1st Respondent/Petitioner

2.Periyasamy

3.Rosalina

4.Muthupandy

5.The Regional Manager,

ICICI Lombard General Insurance Company Limited,

Zenith Housing,

Kesavrao Kade Mark Part,

Mahalakshmi, Mumbai,

Maharashtra District.

...Respondent Nos.2, 3, 4 & 5 /
Respondent Nos.1, 2, 4 & 5

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the order of the claims Tribunal in MCOP.No.105 of 2010, dated 29.11.2013 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Tenkasi and allow the appeal costs.

For Appellant :Mr.J.S.Murali

For R1 :Mr.N.Tamilmani

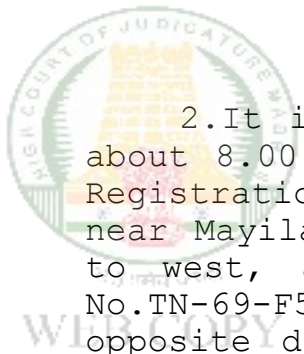
For R4 :No Appearance

For R5 :Mr.K.K.Ramakrishnan

R2 & R3 :Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the order of the claims Tribunal in MCOP.No.105 of 2010, dated 29.11.2013 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Tenkasi.



2.It is a case of accident, which took place on 15.05.2009 at about 8.00 a.m., when the petitioner was driving a vehicle bearing Registration No.TN-72-AA-3405, belonging to the fourth respondent near Mayiladivilaku on Nagercoil - Tirunelveli main road from east to west, at that time, a container lorry, bearing Registration No.TN-69-F5637, belonging to the second respondent, came in the opposite direction, driven by its driver in a rash and negligent manner dashed against petitioner. Due to the said accident, the petitioner sustained grievous injury and immediately he was taken to the Asaripallam Hospital and then taken to the Government Hospital, Tirunelveli for further treatment.

3.The claimant has filed a petition in M.C.O.P.No.105 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Tenkasi, seeking compensation of Rs.25,00,000/-.

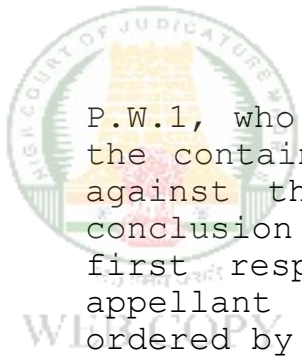
4.Before the Tribunal, on the side of the claimant, three witnesses were examined as P.W.1 to P.W.3. and fifteen documents were marked as Exs.P.1 to P.15. On the the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and four documents were marked as Ex.P1 to Ex.P4.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimant and the respondents and also on appreciating the evidences on record, held that the accident occurred because of the negligence on the part of the driver of the first respondent and directed the appellant herein to pay a sum of Rs.2,96,100/- as compensation at 7.5% interest. Against which, the appellant/third respondent has filed this present appeal to set aside the award of compensation passed by the Tribunal.

6.Heard Mr.J.S.Murali, learned counsel for the appellant and Mr.N.Tamilmani, learned counsel for the first respondent and Mr.K.K.Ramakrishnan, learned counsel for the fifth respondent. No representation on behalf of the fourth respondent.

7.The learned counsel appearing for the appellant contended that the F.I.R. was registered against the claimant and after investigation, charge sheet was also filed. The Investigation Officer, who was examined as R.W.1, also stated that the accident occurred only due to the negligence of the driver of the claimant, but the Criminal Court acquitted the claimant. Based on the acquittal, the Tribunal has fixed liability on the appellant/Insurance company. Further, the compensation awarded by the Tribunal is excessive.

8.On perusal of the Rough Sketch, which was marked as Ex.R2, clearly shows that the driver of the lorry bearing Registration No.TN-72-AA-3405, which came from east to west, went on the north side of the road and dashed the container lorry. Mr.Ganesan,



P.W.1, who was examined as eye witness, stated in his evidence that the container lorry came in a rash and negligent manner and dashed against the claimant's lorry. So this Court can come to the conclusion that both are responsible for accident. Therefore, the first respondent/claimant is also liable for negligence. The appellant is only liable to pay 50% of the compensation amount as ordered by the Tribunal.

9. As far as the quantum of compensation is concerned, the Doctor, who was examined as PW3, has assessed the partial permanent disability as 80% and also the wound certificate, which was marked as Ex.P13. But the Tribunal fixed Rs.2,000/- for 1% of permanent disability, which is very low. Hence, this Court fixed Rs.3,000/- for 1% disability and awarded Rs.2,40,000/-. Except the above, all the other terms of the award passed by the Tribunal is confirmed.

10. Accordingly, the claimant is entitled for compensation as follows:

S.No.	Head	Amount granted by this Court
1.	Disability	Rs. 2,40,000/-
2.	Pain and sufferings	Rs. 10,000/-
3.	Medical expenses	Rs. 91,000/-
4.	Transportation	Rs. 33,100/-
5.	Nourishment	Rs. 2,000/-
	Total	Rs. 3,76,100/-
	Less 50%	Rs. 1,88,050/-

with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

11. In the result,

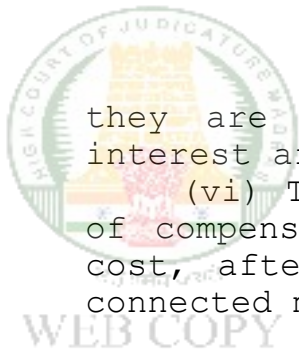
(i) The Civil Miscellaneous Appeal is partly allowed.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.2,96,100/- to Rs.3,76,100/- with interest at the rate of 7.5% per annum.

(iii) The orders passed by the Tribunal with regard to the liability is modified and the negligence on the part of the driver of the lorry bearing Registration No.TN-72-AA-3405 and the driver of the container lorry bearing Registration No.TN-69-F-5637 is fixed in the ratio 50:50.

(iv) Therefore, the present appellant is liable to pay only 50% of the compensation now fixed by this Court together with proportionate interest at the rate of 7.5% per annum.

(v) The learned counsel appearing for the present appellant - New India Assurance Company Limited submitted that they have already deposited the entire compensation awarded by the Tribunal. Hence,



they are permitted to withdraw the excess amount with accrued interest after following due process of law.

(vi) The first respondent/claimant is permitted to withdraw 50% of compensation now fixed by this Court with accrued interest and cost, after following due process of law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Tenkasi.

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

+1 CC to M/s.N.TAMILMANI, Advocate (SR-1811[F] dated 20/01/2022)

+1 CC to M/s.J.S.MURALI, Advocate (SR-1779[F] dated 19/01/2022)

C.M.A. (MD) .No.1229 of 2014

and

M.P. (MD)No.1 of 2014

19.01.2022

MGJ(04.03.2022) 4P 6C