



C.M.A.No.1695 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1695 of 2017

and

C.M.P.No.9093 of 2017

New India Assurance Company Limited,
No.128-A, Thiru Vi-K Road,
Villupuram.

... Appellant / 2nd Respondent

Vs.

1. Arulpandi

... 1st Respondent / Petitioner

2. S.Vivek Kumar

... 2nd Respondent / 1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.10.2016 made in M.C.O.P.No.298 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Villupuram.



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For Appellant : Mr.J.Chandran
For Respondents : Mr.T.Gandhi for R1
R2 - died (steps due)

J U D G M E N T

The appellant is the Insurance Company. Challenging the award dated 26.10.2016 in M.C.O.P.No298 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Villupuram, the appellant / Insurance Company is before this Court.

2. The appellant / Insurance Company challenges the award on the ground that the compensation awarded by the Tribunal was excessive. The Tribunal also failed to appreciate that the alleged accident occurred on 11.02.2013 at 7.30 am and that the Tractor which is alleged to have been involved in the accident was insured only after the accident. The main ground raised by the appellant / Insurance Company is that the Harvester Machine alleged to have been mounted on the Tractor was not insured with the appellant/ Insurance Company. The appellant / Insurance Company also



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disputed the manner in which the accident occurred and that the claimant was not a workman under the owner or driver of the Tractor and therefore, the Tribunal went wrong in holding that the appellant / Insurance Company is liable.

3. The short facts leading to the award of compensation is that the claimant one Arulpandi while working as agricultural coolie under the second respondent viz., Vivek Kumar (owner of the offending vehicle) got injured when the vehicle (tractor mounted with harvesting machine) was abruptly started by the driver of the vehicle one Prakash resulting in amputation of three fingers in left hand and four fingers in the right hand of the claimant. Claiming compensation of Rs.5,00,000/- for the injuries sustained, M.C.O.P.No.298 of 2013 was filed.

4. The Tribunal after taking into consideration the loss of earning capacity as well as the disability sustained by the claimant awarded a sum of Rs.4,34,800/-. The Tribunal held that the respondents 1 and 2 (owner of the



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vehicle and the Insurance Company) are jointly and severally liable to pay the compensation. Challenging the same, the appellant / Insurance Company is before this Court.

5 During the pendency of the appeal, the second respondent (owner of the vehicle) died. The first respondent / claimant entered appearance.

6. The learned counsel for the first respondent / claimant submits that the claimant was aged about 22 years at the time of the accident. Since his fingers were lost, due to the accident, his earning capacity had come to a stand still. Admittedly the driver of the vehicle was at fault as, when the claimant was holding the belt connecting Harvesting Machine with the Tractor, the driver of the vehicle abruptly operated the vehicle, due to which, the claimant hands got caught into the Harvesting Machine, thereby he sustained grievous injuries. Later when he was taken to the hospital since his fingers were crushed and that three fingers in left hand and four fingers



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in the right hand were amputated, this has resulted in permanent disability of the claimant and therefore, the Tribunal was right in awarding the amount of compensation. Contending so, the learned counsel for the first respondent / claimant seeks dismissal of the appeal.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

8. Admittedly the disability suffered by the first respondent / claimant was of permanent nature due to which the claimant had lost the earning capacity at the age of 22 years. Had he not sustained the injuries due to the accident, his earning capacity would have increased year by year. That apart, the accident occurred due to the rash and negligent act of the driver of the vehicle and not due to the negligence of the claimant. Therefore, the Tribunal after taking into consideration of the aforesaid facts had awarded a sum of Rs.4,34,800/- which itself in fact is on the lower side. Therefore, the



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appellant / Insurance Company cannot successfully challenge the award in the present case. That apart during the pendency of the appeal, the second respondent (owner of the vehicle) died and hence, the appellant / Insurance Company is liable to pay the entire compensation awarded by the Tribunal.

9. The Civil Miscellaneous Appeal is therefore dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.11.2023

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

1. The Motor Accidents Claims Tribunal,
Special Sub Court No.II,
Villupuram.
2. The Section Officer,
V.R. Section,
High Court,
Chennai.



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