



C.M.A.(MD)No.1832 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 03.02.2023

Delivered On : 27.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1832 of 2013

The National Insurance Company Ltd.,
175-A, Big Cottage Road,
Tuticorin 628 001.

.. Appellant

Vs.

1.The Tamil Nadu State Transport Corporation,
(Madurai) Ltd.,
Nagercoil Region,
Rep. By its General Manager,
Rani Thottam, Nagercoil.

2.Vellimalai Sankar

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 14.06.2011 made in M.C.O.P.No.1 of 2008 on the file of the Motor Accident Claims Tribunal (Sub Court), Tuticorin.

For Appellant

: Mr.S.Srinivasa Raghavan

For 1st Respondent

: Mr.Prabhakaran

For 2nd Respondent

: No Appearance



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.1 of 2008 dated 14.06.2011, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Tuticorin.

2.The appellant herein is the second respondent, the first respondent herein is the petitioner and the second respondent herein is the first respondent in the claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No.1 of 2008, claiming compensation for the damages, in an accident that took place on 23.06.2006. The Tribunal has awarded a sum of Rs.1,85,941/- (Rupees One Lakhs Eighty Five Thousand Nine Hundred and Forty One only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.1 of 2008 is as follows:

On 23.06.2006 at about 04.00 p.m., when the Corporation bus bearing registration No.TN-74-N-0726 was ridden by its driver in a careful and cautious manner in a slow speed along Madurai-Trichy main road, a lorry bearing registration No.TN-59-2184 which was driven by its driver in a rash and negligent manner dashed against the bus and the bus got damages. The bus was left in the workshop



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for 24 days. Since the bus was not used for 24 days, the petitioner Corporation incurred loss of income of Rs.2,49,840/- (Rupees Two Lakhs Forty Nine Thousand Eight Hundred and Forty only) and a sum of Rs.2,52,520/- (Rupees Two Lakhs Fifty Two Thousand Five Hundred and Twenty only) to carry out the repairs. Hence, the petitioner Corporation has claimed a sum of Rs.5,02,360/- (Rupees Five Lakhs Two Thousand Three Hundred and Sixty only) as compensation for the damages to the bus.

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

The accident had happened on the National Highways. The petitioner Corporation bus driver drove the vehicle without sufficient sleep and he lost the control of the bus and that is the reason for the accident. The damages and loss of income were not clearly stated in the petition. The petitioner Corporation is having so many spare buses and there is no loss of income. The petitioner Corporation has to prove that the lorry was insured with the second respondent. The petitioner Corporation has to prove that the lorry was having valid permit. The petitioner Corporation claimed 12% interest, which is excessive and prayed the petition to be dismissed.



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5.The first respondent remained set exparte. On the side of the petitioner, two witnesses were examined and 6 documents were marked. On the side of the respondents therein, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.1,85,941/- (Rupees One Lakhs Eighty Five Thousand Nine Hundred and Forty One only) as compensation to be paid by the respondents therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:

The Tribunal without appreciating the evidence available on records has awarded Rs.1,85,941/- (Rupees One Lakhs Eighty Five Thousand Nine Hundred and Forty One only). No proof was adduced by the first respondent Corporation regarding the exact amount spent by them for procuring spare parts and other replacement. The quotations and bills were not filed. The depreciation for the vehicle has to be reduced depending upon the age and condition of the vehicle.

6.The Tribunal failed to consider that the first respondent Corporation has got their independent workshop and labourer and there is no justification for the first respondent to claim a sum of Rs.1,65,121/- (Rupees One Lakh Sixty Five Thousand One Hundred and Twenty One only) towards labour cost. The material cost and labour cost were excessive. The Tribunal failed to consider that the first respondent Corporation is having spare buses and there is no loss of income due to non plying of



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the bus. There is no proof for the absence of service in the said route on the date of accident or on the next date. On the side of the appellant, it is stated that the Tribunal has awarded damages and loss of income when there is no proof for the same.

7.A copy of the FIR was marked as Ex.P1. P.W.1 and P.W.2 were examined. On the basis of P.W.1 and P.W.2 and Ex.P1, the Tribunal fixed the responsibility for the accident on the lorry driver. There is no rebuttal evidence on the side of the first respondent. Hence, it is decided that it was the lorry driver, who was responsible for the accident. The insurance policy was marked as Ex.P4. The policy was valid at the time of the accident. The appellant is the insurance company of the offending vehicle and the appellant is liable to pay damages and the loss of income for the first respondent Corporation.

8.A copy of work sheet was marked as Ex.P2. The job card was marked as Ex.P3. The letter regarding damages was marked as Ex.P5. The Tribunal after elaborate discussion regarding the documents, has decided that the first respondent Corporation is entitled to Rs.1,65,121/- (Rupees One Lakh Sixty Five Thousand One Hundred and Twenty One only) as compensation towards damages. The Tribunal has awarded Rs.20,820/- (Rupees Twenty Thousand Eight Hundred and Twenty only) towards loss of income for two days, which is reasonable.



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9. In view of the above discussion, it is decided that there is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.1 of 2008 dated 14.06.2011, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Tuticorin. In the result, this Civil Miscellenaous Appeal is **dismissed**. The 1st respondent herein is entitled to a sum of Rs.1,85,941/- (Rupees One Lakhs Eighty Five Thousand Nine Hundred and Forty One only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

10. The appellant herein is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the first respondent herein is permitted to withdraw the respective share with proportionate interest after deducting any amount received by them earlier. The claimant is not entitled for interest for the default period, if there is any. No Costs.

27.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The Motor Accidents Claims Tribunal, Sub Judge,
Tuticorin.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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