BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.01.2023

Pronounced on : 29.03.2023

CORAM

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

C.M.A(MD)No.283 of 2020

The United India Insurance Company Ltd.,
Through its Branch Manager,
Xavier Builing, PWD Road,
Nagercoil, Agasteeswaram Taluk,
Kanyakumari District. ... Appellant / 2nd respondent

Vs.

1.M.Dharmaraj ...1st respondent / Petitioner

2.T.Vishnu ... 2nd Respondent / 1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree dated 24.04.2019 passed in M.C.O.P.No.119 of 2017 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Nagercoil.

For Appellant : Mr.C.Karthik

For R1 : Mr.Sahul Hameed

For R2 : Mr.S.Palani Velayutham

JUDGMENT

This appeal is filed against the judgment and decree passed in M.C.O.P.No.119 of 2017 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Nagercoil. The appellant is the second respondent, first respondent herein is the claimant and second respondent herein is the first respondent in the claim petition.

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

On 29.11.2015, when the petitioner was travelling in a tempo van bearing registration number TN 75 T 3359, the driver of the van drove the vehicle in a rash and negligent manner and dashed against the back side of the lorry bearing registration number TN 76 F 3166. The petitioner sustained injuries. He was taken to Tirunelveli Government Hospital, then he was admitted in Muthu Neuro Hospital, Sangankadai. He underwent surgery. He took treatment from 30.11.2015 till 14.12.2015. Then he took treatment as outpatient. The petitioner was a driver. He claimed a sum of Rs.10,00,000/- as compensation.

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

The age, income, permanent disability are all denied. The petitioner sustained only simple injuries and he is completely cured now. The petitioner travelled in the tempo as an unauthorized passenger. The first respondent drove the tempo van in a slow and cautious manner. It was the Eicher lorry bearing registration number TN 76 F 3166, which stopped at the middle of the road without any signal, is responsible for the accident. The second respondent is not liable to pay compensation. The claim is excessive.

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

The accident has happened when the lorry driver applied sudden brake, without considering the following vehicle and without giving any signal and he is responsible for the accident. The driver, owner and the insurance company of the lorry are necessary parties to the case. The case is bad for non joinder of necessary parties and the case is to be dismissed.

5.Two(2) witnesses were examined and thirteen(13) documents were marked on the side of the petitioner. One witness was examined and one document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.3,65,000/- as compensation to be paid by the second respondent.

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

The van bearing registration number TN 75 T 3359 is a goods vehicle. It cannot be used to carry passengers. The insurance policy is only for third party liability and for the driver of the van. The driver of the van was the owner of the vehicle. There is no insurance coverage for the passenger. The insurance company is not liable to pay compensation. Carrying passenger in a goods van is a violation of policy conditions. It was the lorry driver who was negligent and not the driver of the tempo van. The driver cum owner of the van pleaded guilty before the Criminal Court. But in the cross examination of P.W.1, he has admitted that there is no rashness or negligence on the part of the owner of the van. The Tribunal is wrong in fixing the liability on the appellant. The Tribunal hs awarded Rs.50,000/- for 5% disability. The Tribunal has awarded Rs.6,000/- towards simple injuries. The Tribunal has awarded Rs.54,000/- towards loss of income without any proof of income. The Tribunal hs awarded a sum of Rs.2,51,671/- towards medical expenses.

Only xerox copies of advance payment receipts were filed. There is possibility for the claimant to have produced the original consolidated bills to claim insurance from some other forum.

7.On the side of the appellant, it is stated that the policy is only an Act only policy. The passengers are not covered by the policy. The vehicle is a goods carrier. P.W.1 has admitted that there was no goods in the vehicle and that the vehicle was not driven by the claimant. P.W.1 has deposed that the negligence was on the part of the lorry driver who applied the sudden brake. The Tribunal is wrong in fixing the liability on the appellant.

8.On the side of the respondent it is stated that the claimant is a driver. He travelled in the van only as a driver. Due to some health problem he handed over the vehicle to the owner, the owner of the vehicle drove the vehicle in a rash and negligent manner. On the basis of the evidence of P.W.1 and on the basis of Ex.P1, Ex.P4 and Ex.P5, the Tribunal fixed the liability on the owner of the van. Considering that the van hit the lorry from behind and considering the evidence of P.W.1, it is decided that the owner of the van is responsible for the accident.

9.On the side of the appellant it is stated that the claimant travelled in the van only as a gratuitous passenger and that Ex.R1 is the copy of the insurance policy. The driving licence of the claimant was not marked in this case and that the evidence of P.W.1 is a self serving evidence and that the First Information Report was registered on the complaint of P.W.1. and that the wordings in the First Information Report is insufficient to decided that the claimant travelled in the van as a spare driver.

10. On the side of the claimant it is stated that the claimant travelled in the van as a driver. In Ex.P1, the First Information Report itself mentioned that the claimant was working as a driver in the van. For transporting haystack from Kamuthi, the van was taken from Nagercoil and the claimant travelled only as a spare driver. On the basis of the evidence of P.W.1 and on the basis of Ex.P1, the Tribunal gave a finding that the claimant travelled only as a spare driver.

11. On the side of the appellant it is stated that there is no coverage for a passenger. A perusal of Ex.R1 reveals that premium was paid for a paid

driver. Claimant failed to examine the owner of the vehicle. The claimant was not driving the vehicle at the time of accident. But he travelled as paid spare driver. Hence it is decided that the insurance company is liable to pay compensation and the insurance company of the vehicle is liable to pay compensation to the claimant.

12. P.W.2 has deposed that the petitioner undergone surgery on 30.11.2015 and on 06.05.2016. Ex.P11 and Ex.P12 were marked. The medical board has fixed the disability as 5% and the report of the medical board is marked as Ex.P13.

13. On the side of the appellant it is stated that for 5% disability, the Tribunal has awarded Rs.50,000/- as compensation which is excessive.

14. Considering the date of accident, it is decided that the claimant is entitled to Rs.15,000/- as compensation for the disability, Rs.2,000/- for transport expenses, Rs.2,000/- towards attendant charges, Rs.2,000/- towards extra nourishment all reasonable. The Tribunal has awarded Rs.25,000/- towards pain and sufferings which is excessive and the same is reduced to Rs.

10,000/-. The Tribunal has awarded Rs.54,000/- for the period of rehabilitation, and Rs.4,800/- towards temporary loss of income. Since the petitioner has undergone two surgeries, it is decided that for the period of treatment and for the period of rehabilitation, the petitioner is entitled to Rs. 27,000/-(3 x 9000) towards temporary loss of income. The Tribunal has awarded Rs.2,15,671/- towards medical expenses.

15. On the side of the appellant it is stated that the consolidated bill for the amount was not marked as a document and most of the bills were only for advance payment. Medical bills are marked as Ex.P8. A perusal of the medical bills reveal that all the medical bills are xerox copies. In most of the bills, there was no seal mark from the Hospital and some of the bills are computerized bills, in some of the bills the name of the patient was not mentioned. The annexed bills are upto May-2016. Considering that the disability is only 5%, the amount mentioned in the medical bill are excessive. Considering the contention of the appellant it is decided that the claimant is entitled to Rs.2,00,000/- towards medical expenses.

Hence, the award amount is modified as under:

Loss of income	-	Rs. 45,000/-
Permanent disability	-	Rs. 15,000/-
Transport Corporation	-	Rs. 5,000/-
Attendant charges	-	Rs. 2,000/-
Extra nourishment	-	Rs. 2,500/-
For pain and sufferings	-	Rs. 10,000/-
Medical expenses	-	Rs. 2,00,000/-
Total	-	Rs.2,85,500/-

16. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.3,65,000/- to Rs.2,85,500/- (Rupees Two Lakhs Eighty Five Thousand and Five Hundred only).

(ii) The second respondent herein / the owner of the vehicle is directed to deposit the enhanced compensation amount i.e., Rs.2,85,500/- (less the amount 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 with cost to the credit of M.C.O.P.No.119 of 2017 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Nagercoil, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the first respondent herein / claimant is at liberty to withdraw the entire award amount of Rs.2,85,500/- (Rupees Two Lakhs Eighty Five Thousand and Five Hundred only), with proportionate interest at the rate of 7.5% per annum, after following the due process of law, less any amount already received by them.

29.03.2023

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

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To

1.The Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court,
Nagercoil, Dindigul.

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

R.THARANI, J.

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Pre - Delivery Judgment made in
C.M.A(MD)No.283 of 2020

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