



C.M.A.No.1611 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.08.2023
PRONOUNCED ON : 18.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

C.M.A.No.1611 of 2018 and
C.M.P.No.12825 of 2018

The Oriental Insurance Company Limited,
Branch Office, Represented by its Branch Manager,
Post Box No.19, 1st Floor,
Sedha Veerappa Chetty Street,
Dharmapuri – 636 701.

...Appellant

Vs.

1. Kandasamy
2. N.E.Krishnan
3. Ettiya Gounder

4. National Insurance Co. Ltd.,
Branch Office,
Represented by its Branch Manager,
Ambattur Branch, Chennai – 600 040.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decretal order dated 10.08.2015 in M.C.O.P.No.2187 of 2014 by the learned Motor Accidents Claims Tribunal, Special Subordinate Court, Dharmapuri.



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For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mrs.K.Saraswathi for R4
No Appearance - R1 and R2

JUDGMENT

This appeal is filed by the Insurance Company challenging the liability and quantum of compensation awarded by the Tribunal in M.C.O.P.No.2187 of 2014 dated 10.08.2015 by the learned Motor Accidents Claims Tribunal, Special Subordinate Court, Dharmapuri.

2 The appellant is the Insurance Company of the Tractor, first respondent is claimant, second respondent is owner of the Tractor bearing Reg.No.TN 29 AA 8412, third respondent is owner of the Trailer Reg.No.TDY 0181 and fourth respondent is insurance company of the Trailer. The first respondent filed claim petition in M.C.O.P.No.2187 of 2014 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in the accident.



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3 According to the first respondent/claimant on 16.04.2009, when the first respondent was driving the Tractor Trailer loaded with Sugarcanes to Palacode Sugar Mill, in the Palacode Road, slowly and cautiously, keeping left side and when the Tractor reaches one Parthiban's house, since the Cow crossed suddenly, he applied break, due to which the sugarcanes loaded in the vehicle collapsed and fell on the back of the claimant and he got injuries at the spinal cord. Therefore the first respondent/claimant filed claim petition against the owners of both the Tractor and Tractor and Insurance Companies of the same, claiming compensation of Rs.5,00,000/- for the injuries sustained by him in the accident.

4 The claim petition was contested by the appellant/Insurance company of the Tractor and the fifth respondent, who is the Insurance Company for the Trailer and they filed a detailed counter denying all the allegations in the claim petition apart from disputing the negligence, quantum and liability.



5 Before the claims Tribunal, the claimant was examined as P.W.1 and the Doctor, who issued disability certificate was examined as P.W.2 and Exs.P1 to P11 were marked in support of the claim. On the side of the respondents , R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R7 were marked.

6 The claims Tribunal, on an assessment of the entire evidence on record, fixed liability on the owners of both the Tractor and Trailer and awarded a sum of Rs.2,78,600/- as compensation along with 7.5% interest directed both the appellant/Insurance Company of Tractor and the fourth respondent, who is the Insurance Company of the Trailer to pay 50% of the compensation each and since there was violation of policy condition ordered pay and recovery. Questioning the liability and challenging the quantum of compensation, the Insurance Company of the Tractor has filed the present appeal before this Court.



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7 Learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal made a finding that the claimant himself is a tort-feasor, but, erroneously fixed liability on the appellant/Insurance Company and ordered pay and recovery. Once the Tribunal finds that the claimant himself is a tort-feasor, claim petition under Section 163 of Motor Vehicles Act is not maintainable. As per Section 143(A), the annual income of the claimant, claiming compensation under the Motor Vehicles Act, should be less than Rs.40,000/- p.a. and if it is above Rs.40,000/-, the claim petition under Section 163A is not maintainable. The Tribunal erroneously foisted the liability on the Insurance Companies, which is unwarranted.

7.1 The quantum of compensation awarded by the Tribunal is also on the higher side. Further the claimant did not possess valid driving license at the time of accident and hence the appellant/Insurance Company is not liable to pay any compensation to the claimant, since he himself is a tort-feasor. The Tribunal failed to appreciate the oral and documentary evidence



and also the legal position and hence the appellant has to be exonerated from the liability.

8 Even though notice served on the respondents 1 & 2, there is no appearance for them.

9 Learned counsel appearing for the fourth respondent, who is the Insurance Company of the Trialer reiterated the submissions made by the learned counsel for the appellant/Insurance Company.

10 Heard the learned counsel appearing on either side and perused the materials available on record.

11 Admittedly at the time of accident the first respondent/claimant was Driving the Tractor along with Trailer loaded by Sugarcanes. The Tractor was insured with the appellant/Insurance Company and the Trialer was insured with the fourth respondent and hence both the Insurance Companies were impleaded as party to the claim petition.



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12 It is the main contention of both the Insurance Companies that at the time of accident the claimant, who drove the Tractor along with Trailer did not possess valid driving license and since he himself is a tortfeasor, the Insurance Companies are not liable to pay any compensation. Further it is not accidental injury and the Tractor did not meet accident with other vehicle and it is the claimant, who applied sudden break, since the cow suddenly crossed the road and caused accident.

13 However, as observed by the Tribunal, from the evidence of P.W.1, it is clear that while he was transporting the sugarcane in the Tractor along with Trailer insured with appellant and the fourth respondent respectively, a cow suddenly crossed the road and to avoid hitting of the cow, he applied sudden break, due to which, the sugarcane fell on the back of the claimant and the claimant sustained grievous injuries on the spinal cord and he underwent surgery. Exs.P7, 8, 10 and 11 the medical records proved the injuries sustained by the claimant.



14 Even though, the claimant did not possess valid driving license at the time of accident, both the Tractor and the Trailer were insured with the appellant and the fourth respondent respectively and since the accident and the injuries sustained by the claimant was proved, both are liable to pay the compensation. Further, it is an admitted fact that the claimant at the time of accident did not possess valid driving license and hence the Tribunal on a proper appreciation of evidence ordered pay and recovery and also directed each of the insurance companies to pay 50% of the compensation amount, in which this Court does not find any perversity.

15 Coming to quantum of compensation, the disability suffered by the claimant was assessed by P.W.2 as 55% and the Tribunal fixed Rs.3,000/- per percentage, which is reasonable and the amount awarded under the other heads are also according to this Court is reasonable considering the cost of living prevailing during the relevant period.



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16 In the result, this Civil Miscellaneous Appeal shall stand dismissed as devoid of merit and substance. Consequently connected miscellaneous petition is closed. No costs.

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Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The Motor Accidents Claims Tribunal,
Special Subordinate Court, Dharmapuri.
2. The Section Officer, V.R.Section, High Court, Madras.



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P.VELMURUGAN. J.,

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Pre-Delivery Order in
C.M.A.No.1611 of 2018 and
C.M.P.No.12825 of 2018

18.03.2024