

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2015

CORAM

THE HON'BLE MR.JUSTICE C.S.KARNAN

C.M.A.No.3047 of 2012

and

M.P.No.1 of 2012

M/s.ICICI Lombard General Insurance
Company Ltd.,
'Swarnambigai Plaza'
Omalur Main Road,
Salem-636 009.

...Appellant/2nd Respondent

vs

1.Seeralan
2.S.Devan

...Respondents/Petitioner /
1st Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree dated 23.09.2011 made in M.C.O.P.No.602 of 2007 on the file of the Motor Accident Claims Tribunal (Subordinate Court) at Sankari.

For Appellant : M/s.R.Sree Vidhya

For Respondents : Mr.Ma.P.Thangavel (for R1)
R2 - Ex-parte

JUDGMENT

The claimant was travelling in a Tata Ace Tempo bearing Registration No.TN-29-AA-7772 as the owner of goods, on 30.09.2007, on the Pennagaram Main road and at that point of time, the driver of the vehicle lost his control. As a result, the vehicle had capsized. As a result, the claimant had sustained multiple bone fracture injuries and hence the claim has been levelled against the owner and insurer of the offending vehicle.

2.The Insurance Company has filed a counter statement and refuted the claim petition. The petitioner was a gratuitous passenger and travelling in the goods vehicle and as such the Insurance Company is

not liable to pay compensation as claimed by the petitioner. Further, at the time of accident, about 25 persons had travelled on the goods tempo. The driver of the vehicle did not possess valid driving licence and the vehicle was not covered with valid documents. Besides, the respondent denied the age, income, occupation and nature of injuries.

3. After considering the averments of both sides, the Tribunal had framed three issues namely (1) Whether the vehicle had been driven by its driver in a rash and negligent manner and caused the accident? (2) Whether the driver of the vehicle had a valid driving licence? If so, whether the Insurance Company is liable to pay compensation? (3) Whether the claimant is entitled to receive compensation? If so, what is the quantum of compensation?

4. On the side of the claimant, two witnesses were examined and 10 documents were marked namely F.I.R., Wound Certificate, Discharge summaries, Medical Bills, Copy of Insurance Policy, Disability Certificate, X-ray and Receipt. On the side of the respondent, two witnesses were examined and 6 documents were marked namely Insurance Certificate, Advocate notice and acknowledgment card, Accident report, Confiscation report of vehicle and return of the vehicle.

5. PW1 had adduced evidence stating that on 30.09.2007, at about 1.00 p.m., when he was travelling on the first respondent's vehicle, along with his goods namely Ragi and Corn, bearing Registration No. TN-29-AA-7772 and while the vehicle was proceeding on the Pennagaram main road towards Dharmapuri, the driver had attempted to pass the curve, with high speed. As a result, the vehicle had capsized and the claimant had sustained injuries. PW1 further stated that he had sustained injuries on his head, spinal cord C5, C6 and C7 bones. Initially, he had undergone treatment at Government Hospital, Dharmapuri and subsequently, he was admitted at St. John Hospital for better treatment, wherein he was hospitalized as inpatient for a period of 20 days. During medical treatment, a surgical operation was conducted. PW1 further stated that, he had been involved in agricultural operations and earning Rs.3,000/- per month.

6. PW2, had adduced evidence that the claimant's spinal cord C5 had been broken and a surgical operation was conducted after replacing the bone and now the fractured bone is malunited. Further, the Doctor had assessed the disability at 28%.

7. RW1 had adduced evidence stating that he is the legal manager attached to the second respondent herein. The vehicle had been insured with the Insurance Company. As per the policy conditions, no passengers are permitted to travel, since the vehicle is a goods vehicle. At the time of accident, 25 unauthorised persons had

travelled. The driver of the vehicle did not possess any valid driving licence. RW2, the Sub-Inspector of Police had adduced evidence as per the contents made in the F.I.R.

8. After recording evidence of both sides and on perusing the exhibits marked by both sides, the Tribunal had awarded a sum of Rs.1,50,000/- with interest at the rate of 7.5% per annum. Against the said award, the Insurance Company has filed the above appeal.

9. The highly competent counsel M/s.R.Sree Vidhya appearing for the appellant submits that at the time of accident, 25 unauthorised passengers had travelled in the goods vehicle. As such, the claimant is not entitled to receive any compensation from the Insurance Company since the policy conditions have been violated. Further, the driver of the vehicle did not possess valid driving licence. Therefore, the Insurance Company is not liable to pay any compensation. As such, the award cannot be executed against the Insurance Company. Therefore, the very competent counsel entreats the Court to allow the above appeal.

10. The highly competent counsel Ma.P.Thangavel appearing for the claimant submits that the claimant had travelled along with his goods viz. Ragi and Corn, on the goods vehicle, which had been driven by the first respondent / owner of the vehicle. The driver had driven the vehicle in a rash and negligent manner on the curved road and as a result, the vehicle had capsized. Therefore, a criminal case had been levelled against the driver of the offending vehicle under the relevant sections. The claimant's age was 35 years at the time of accident and he had undergone medical treatment at a private hospital, Bangalore for a period of 20 days as an inpatient. Subsequently, he had undergone treatment, as an inpatient subsequently, he had undergone treatment as an outpatient for a considerable period. The Doctor had assessed the disability at 28%. The claimant's spinal cord C5, C6 and C7 were broken into several pieces. As a result, a surgical operation was conducted on the fractured bone. The fractured bone has been malunited. After the accident, the claimant could not involve himself in cultivation activities. The Tribunal had not awarded an adequate compensation under the heads of pain and suffering, transport, attender charges and loss of amenities and disability.

11. Per contra, the very competent counsel M/s.Sree Vidhya submits that in the instant case, the Tribunal had not considered the pay and recovery principle since the driver of the vehicle did not possess valid driving licence. Further, the learned counsel submits that the appellant had deposited entire compensation amount, out of which a part of the amount had been withdrawn by the claimant and this is the present condition.

12. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed set of papers, this Court does not find any discrepancy in the said award. This Court is of the view that the Investigation Officer had not stated that 25 persons had travelled in the goods vehicle. It is seen from the evidence, that the claimant had travelled, along with his goods / food grains. Further, as per the medical records, the claimant's spinal cord C5, C6 and C7 had been broken and a surgical operation was conducted. On considering the nature of injuries, age of claimant and occupation, the compensation amount awarded is not on the higher side. Hence, this Court confirms the award. The appellant is at liberty to recover the said compensation amount from the owner of the vehicle by way of filing execution proceedings in the same award and decree since as per the trial Court proceedings, the driver did not have driving licence at the time of accident.

13. Now, the claimant is at liberty to withdraw the rest of the award amount with accrued interest thereon lying in the credit of M.C.O.P.No.602 of 2007, on the file of the Subordinate Court, Sankagiri, after filing a memo, along with a copy of this order.

14. In the result, the above civil miscellaneous appeal is dismissed. Consequently, the Judgment and Decree passed in M.C.O.P.No.602 of 2007, on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Sankari, dated 23.09.2011, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar(co)

//True copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal
Subordinate Court,
Sankari.

2. The Section Officer,
VR Section,
High Court, Madras.

C.M.A..No.3047 of 2012
and
M.P.No.1 of 2012

AK(co)
cp 09/10/2015