

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.11.2016

Pronounced on :10.01.2017

CORAM

THE HON'BLE MR. JUSTICE G.CHOCKALINGAM

Civil Miscellaneous Appeal No.1833 of 2004

Padmanabhan

.. Appellant

/vs/

1.B.Ganapathy
(R1 set exparte before
the Tribunal)

2.Oriental Insurance Co. Ltd.,
Thiruvarur,
Rep.by its Branch Manager

3.National Insurance Co.Ltd.,
Thiruvarur
through its Branch Manager

.. Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 24.07.2003 made in M.A.C.T.O.P.No.98 of 2001 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Court), Nagapattinam.

For Appellant :Mr.M.Sriram

For Respondents :R1-served- No appearance
Mr.S.Manohar for R2
Mr.J.Chandran for R3

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award dated 24.07.2003 made in M.A.C.T.O.P.No.98 of 2001 passed by the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Nagapattinam.

2. The appellant as claimant had filed a claim petition in M.A.C.T.O.P.No.98 of 2001 before the learned Motor Accidents Claims Tribunal (Principal Subordinate Judge), Nagapattinam, for claiming compensation of Rs.6,00,000/- for damages and sustained injuries by the claimant, who met with an accident on 30.07.2000 at 10.30p.m.

3. The brief facts of the case are as follows:

On 30.07.2000 at about 10.30 p.m., the claimant travelled along with his close friend one Selvaraj in TVS Samrai motor cycle. The said Selvaraj was driving the motorcycle and the claimant was travelling as a pillion rider. The said Selvaraj stopped the motor cycle at VKM Marriage Hall in Tiruvarur Bye-pass road situated on the way to Royal Park Hotel and went inside the VKM Marriage Hall and the claimant was standing near motorcycle. At that time, the first respondent, who was driving an auto bearing Reg.No.TN 51 X 5643 came in a rash and negligent manner and hit against the claimant and motorcycle, as a result of which, the appellant/claimant sustained grievous injuries and the motor cycle was also damaged. Immediately, the claimant/injured was admitted into Tiruvarur Hospital by his friend Selvaraj.

4. The Trial Court, after considering the oral and documentary evidence adduced on the side of the appellant, finally dismissed the claim petition on 24.07.2003. Aggrieved against the judgment passed by the learned Motor Accident Claims Tribunal (Principal Subordinate Judge), Nagapattinam, the appellant/claimant has preferred the present Civil Miscellaneous Appeal before this Court.

5. The learned counsel appearing for the appellant/claimant would mainly contend that the trial Court, without analysing the oral and documentary evidence adduced on the side of the appellant/claimant, has erroneously dismissed the claim petition as against the appellant concluding that the appellant/claimant alone is responsible for the said accident. Further, the trial Court has also failed to consider the fact that there is no contra evidence adduced on the side of the respondents and also failed to see that in the counter affidavit, the respondents 2 and 3 nowhere denied the involvement of both the vehicles in the accident. Further, considering the injuries and disabilities sustained by the claimants and also medical expenses incurred to him, the Tribunal ought to have granted compensation to the claimant. Hence, the learned counsel for the appellant prays to allow the appeal by granting sufficient compensation.

6. The learned counsel appearing for the second respondent/Oriental Insurance Company would mainly contend that the

autorickshaw was not insured with the second respondent at the time of accident and the first respondent did not have a valid and effective driving license at the time accident. Hence, the second respondent is not at all liable to pay any compensation to the appellant/claimant and the Tribunal has rightly rejected the claim petition filed by the claimant and prays for dismissal of the appeal.

7. The learned counsel appearing for the third respondent/National Insurance Company would contend that the trial Court, after considering the entire evidence adduced on the side of the appellant/claimant, fairly come to the conclusion that the appellant/claimant alone is responsible for the accident and the third respondent is not at all liable to pay the compensation and there is no illegality, perversity and infirmity in the order of the Tribunal and hence the appeal is liable to be dismissed.

8. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 2 and 3 and also perused the materials available on record.

9. It is admitted by both sides that the appellant/claimant initially filed the claim petition as against respondents 1 and 2. Subsequently, the third respondent was impleaded as party to the claim petition. It is further admitted fact that there is no dispute in the accident, the claimant was

examined as PW1 and the Doctor was examined as PW2 on the side of the appellant/claimant. None was examined on the side of the respondents to disprove the evidence of P.W.1. Hence, this Court finds that there is no reason to disbelieve the evidence of P.W.1.

10. Admittedly, in this case when one Selvaraj was driving the motor cycle and the appellant/claimant was travelling as pillion rider and during the time of accident, the appellant/claimant was standing near the static vehicle in the left side, at that time, the accident was occurred at about 10.30 p.m. Immediately, Selvaraj, who drove the vehicle, has taken the appellant/claimant to Tiruvarur Government Hospital and subsequently, the appellant/claimant was referred to Tanjavur Medical College Hospital. On perusal of Ex.P3, the appellant/claimant was admitted in the Tiruvarur Government Hospital on 30.07.2000 at 11.00p.m. Immediately he was taken to the Tanjavur Medical College Hospital by the said Selvaraj at about 30/31.07.2000 at 1.05 hrs. Hence, it is clearly proved that the said Selvaraj was not examined as witness and he alone has admitted the injured to the Government Hospital. It is further seen from Ex.P3, the injured was immediately referred to Tanjavur Medical College Hospital on 30.07.2000 at about 11.00 p.m. and the injured was brought to Tanjavur Medical College Hospital by Mr.Selvaraj. It is clearly seen from the Ex.P17 that the said Selvaraj was accompanied with the appellant/claimant during the time of admitting in Tiruvarur Government Hospital and Tanjavur Medical College

Hospital. After admitting the appellant/claimant in the Hospital, the said Selvaraj has lodged a complaint before the Tiruvarur Police Station on 31.07.2000 at about 10.00 hrs.

11. When the injuries was admitted in the hospital, the said Selvaraj accompanied the injured, he lodged a complaint before the police on the very next day i.e on 31.07.2000. Hence, the delay in filing the First Information Report will not be a ground to reject the evidence of P.W.1 (or) complaint given by the said Selvaraj before the police station. On receipt of the complaint, First Information Report-Ex.P1 was registered in Crime No.430 of 2000 under Sections 279, 337 I.P.C. At the time of lodging the complaint, non-mentioning of the auto registration number will not be a ground for disbelieving the accident. Further, in this case, after investigation, a charge sheet was filed before the learned Judicial Magistrate, Tiruvarur in S.T.C.No.670 of 2001 and the first respondent was pleaded guilty and has paid a fine of Rs.1300/- on 13.07.2001.

12. In view of the above, even though the first respondent, who was driver of the auto, as a party to the claim petition, he remained ex-parte before the Tribunal. Hence, from the perusal of the above records, the first respondent admitted his guilty of offence and has paid a fine of Rs.1,300/- before the concerned Judicial Magistrate on 13.07.2001 and consequently proved that the first respondent alone is responsible for the accident. Hence,

the trial Court, without considering the above documents, has erroneously come to a wrong conclusion that on presumption and assumption, it cannot be the reason to disbelieve the evidence of P.W.1 that the appellant/claimant was under the influence of alcohol. Hence, this Court is of the considered view that due to rash and negligent driving of the first respondent driver, the accident was occurred. Hence, it is also admitted that the vehicle was not insured with the 2nd respondent and insured with the 3rd respondent, hence, the 3rd respondent is liable to pay the compensation to the appellant/claimant.

13. In this case, admittedly, on perusal of the records produced on the side of the appellant, the appellant is a motor cycle mechanic, which was proved under Ex.P9 and Ex.P10. The appellant is having passport-Ex.P11 and he went to abroad for earning more money. In view of the Exs.P9 and P10, the appellant/claimant could have earned a sum of Rs.5,000/-per month. In the discharge summary-Ex.P4 issued by the Thanjavur Medical College, it is clearly seen that the appellant/claimant was admitted in the hospital on 31.07.2000 and discharged on 29.09.2000, he was an in-patient in the hospital for nearly two months, and hence, the appellant/claimant is entitled for **Rs.10,000/-** under the head of **"loss of earning capacity"** for two months (Rs.5,000/- x 2 months= Rs.10,000/-). A Doctor, who was examined P.W.2, assessed disability at 57% and issued disability certificate-Ex.P13. On perusal of evidence of P.W.2 and also disability certificate-Ex.P13 issued by the Doctor, this Court comes to a conclusion that the disability of the

appellant will be fixed at 50% and awards a sum of **Rs.60,000/-** under the head of **"Disability"**. Further, since the appellant is transported to Tiruvarur hospital and subsequently, he was transported to the Thanjavur Medical College Hospital, he is entitled for **Rs.3,000/-** under the head of **"transportation"**. Considering the nature of injuries and damages, he is entitled for **Rs.3,000/-** under the head of **"damages to cloths and other things"**. The appellant sustained grievous injuries and he was taking treatment for a period of two months as inpatient. Considering the medical bills-Exs.P7 and P8 for Rs.5,669.69 are produced by the appellant, this Court awards a sum of Rs.**6,000.00** under the head of **"medical expenses"**. According to the appellant/claimant, nobody has supported and attended him when he was hospitalised. Hence, this Court is not inclined to award any amount under the head of "Attendant Charges". Further, considering the nature of injuries and pain etc., the appellant/claimant is entitled for **Rs.20,000/-** towards **"pain and sufferings"**, thus, totally, a sum of Rs.1,02,000/- is awarded as compensation to the appellant/claimant.

<i>Name of the Head</i>	<i>Amount Rs.</i>
Loss of earning Power	Rs.10,000-00
Transportation	Rs. 3,000-00
Damages to Cloth and other things	Rs. 3,000-00
Medical expenses	Rs. 6,000-00
Pain and suffering	Rs.20,000-00
Disability	Rs.60,000-00
Total	Rs.1,02,000-00

14. Under such circumstances, this Civil Miscellaneous Appeal is partly allowed and the judgment and decree of the Tribunal are set aside. The appellant/appellant is entitled for **Rs.1,02,000/- (Rupees one lakh and two thousand only)** as compensation with interest at the rate of 7.5% p.a., from the date of petition till the date of deposit. The 3rd respondent/Insurance Company is directed to deposit the entire compensation amount before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the same on filing due application. No costs.

10.01.2017

Index:Yes/No

Internet:Yes/No

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To

The Motor Accidents Claims Tribunal,
Principal Subordinate Court, Nagapattinam.

G.CHOCKALINGAM, J.

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Pre-delivery Judgment made in
C.M.A.No.1833 of 2004

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<http://www.judis.nic.in>