

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-04-2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.38 of 2010
and M.P.No.1 of 2010

1.United India Insurance Co. Ltd.,
Villupuram.
(Insurer of Lorry No.TN31 X 0802)

2.United India Insurance Co. Ltd.,
Chennai
(Insurer of Lorry No.TN04 A 2444)

...

Appellants

Vs

1. Senthil
2. Muthumalai
3. National Insurance Co. Ltd.,
Chennai.
4.Arumugam
5.G.Dhanasekaran
[Respondents 2, 4 & 5 are
exparte in the lower court]

...

Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree, dated 19.12.2007, made in M.C.O.P.No.79 of 2002, by the learned II Additional Subordinate Judge, Motor Accident Claims Tribunal, Villupuram.

For Appellants : Mr.G.Udaysankar

For R-2 : Mr.V.S.Sivasundaram

For R-3 : Mrs.N.B.Surekha

J U D G M E N T

This appeal arises out of Judgment dated 19.12.2007 passed in M.C.O.P.Nos.79 of 2002 on the file of the II Additional Subordinate Judge, Motor Accident Claims Tribunal, Villupuram.

2. The appellants herein are the respondents 4 & 6, respondents 2 to 5 herein are respondents 1, 2, 3 & 5 and the first respondent is the claimant in MCOP No.79 of 2002.

3. The first respondent/claimant filed claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.04.1999.

4. According to the first respondent, while he was travelling as a cleaner in the mini lorry bearing Regn.No.TN 07 F 8005 belonging to the 2nd respondent, insured with the third respondent, the driver of the mini lorry drove the same in a rash and negligent manner and dashed against the lorry bearing Regn.No.TN 31 X 0802 coming in the opposite direction, belonging to the 4th respondent which was insured with the first appellant. Due to the impact, the driver of the mini lorry lost his control and subsequently collided with another lorry bearing Regn.No.TN 04 A 2444, belonging to the 5th respondent, insured

with the 2nd appellant. In the said accident, the first respondent sustained multiple injuries and fracture. He was given first aid at Government Hospital, Kallakurichi and thereafter admitted as inpatient in Jipmer Hospital, Pondicherry. Subsequently, he was admitted in Government General Hospital, Chennai and was taking treatment as inpatient. The first respondent underwent surgery in Jipmer Hospital, Pondicherry and Government General Hospital, Chennai and plates were fixed in his leg. In spite of surgeries, he has not recovered fully from the injuries and was unable to do his work as done earlier.

5. In the claim petition, it is further stated that the drivers of the respondents 4 & 5 also drove the vehicles in a rash and negligent manner and caused the accident and hence all the three drivers are responsible for the accident. Thus, claiming a compensation of Rs.5,00,000/-, the first respondent filed claim petition before the tribunal.

6. The respondents 2, 4 and 5 remained *exparte* before the Tribunal. The first appellant and the third respondent filed separate counters denying all the averments made by the first respondent/claimant.

7. In the counter filed by the third respondent, it is stated that the driver of the mini lorry was driving the vehicle carefully and the accident

occurred only due to the rash and negligent driving by the drivers of the other two lorries belonging to the respondents 4 and 5.

8. In the counter filed by the first appellant, it is stated that the accident occurred only due to the rash and negligent driving by the driver of the mini lorry belonging to the second respondent, insured with the third respondent and hence the respondents 2 and 3 alone are liable to pay the compensation. It is further stated in the counter that FIR was lodged by the driver of the 4th respondent against the driver of the second respondent and hence, the appellants and respondents 4 & 5 are not liable to pay any compensation and prayed for dismissal of the claim petition.

9. Before the Tribunal, the first respondent was examined as P.W.1 and the doctor who treated the first respondent was examined as P.W.2. Fourteen (14) documents were marked as Exs.P1 to P14. On the side of the respondents, one Mathiaghazan was examined as R.W.1 and five (5) documents were marked as Exs.R1 to R5.

10. The Tribunal framed necessary points for consideration. On considering the pleadings, oral and documentary evidence, the Tribunal came to a conclusion that the accident took place only due to the rash and negligent

driving of all the three drivers and fixed liability at 60% on the 3rd respondent, payable on behalf of the 2nd respondent and 20% each on the the appellants, payable on behalf of the 4th & 5th respondents, thereby directing them to pay the compensation. The tribunal, considering the nature of injuries sustained by the first respondent and on perusal of Exs.P10 & P11, awarded a sum of Rs.2,08,200/- as compensation payable to the first respondent. Against the said order dated 19.12.2007, the appellant insurance companies filed the present appeal.

11. The learned counsel for the appellants would submit that the accident occurred only due to the rash and negligent driving of the driver of the second respondent and that the FIR was lodged only against the driver of the second respondent. It is further submitted that even the first respondent has deposed in his evidence that the accident had occurred only due to the rash and negligent driving of the driver of second respondent. However, without considering the evidence of P.W.1 and R.W.1, Tribunal has erroneously fixed liability on all the three drivers of the vehicles. It is also submitted that the Tribunal erred in applying the multiplier and ought to have awarded the compensation based on the percentage of liability.

12. The learned counsel for the first respondent submitted that the

first respondent has stated in the claim petition as well in his evidence as PW1, that all the three drivers of the vehicles are responsible for the accident. The learned counsel also referred to the evidence of PW1 wherein he has stated that all the drivers were responsible for the accident. Therefore, the tribunal has considered the pleadings and evidence in a proper and perspective manner and fixed the liability on all the three drivers of the vehicles. The first respondent has proved that due to the injuries sustained by him, he is totally incapacitate and has not cured fully and that the Doctor who examined him has stated that further surgeries have to be done which will cost a sum of Rs.1,25,000/-.

13. Per contra, the learned counsel appearing for the third respondent contended that the accident was not due to the rash and negligent driving of the driver of the 2nd respondent and therefore, the respondents 2 and 3 are not liable to pay any compensation to the first respondent.

14. I have heard the rival submissions and perused the materials available on record.

15. The contention of the learned counsel for the appellants that the first respondent himself had admitted that the accident occurred only due to the rash and negligent driving of the driver of the 2nd respondent is contrary to the

evidence and is unsustainable. The first respondent, in the claim petition has stated that the accident occurred only due to the rash and negligent driving of all the three drivers of the vehicles as they had not followed the traffic rules while driving the vehicles. As P.W.1 has deposed in his evidence that all the three drivers of the vehicles are responsible for the accident, the tribunal, appreciating the evidence in proper and perspective manner, held that the respondents 4 and 5 could have avoided the accident if they were cautious enough and careful in driving their vehicles at the time of accident. The tribunal has given a valid reason for fixing the negligence and liability on the drivers of the respondents 4 and 5. Hence, there is no reason to interfere with the said finding. The first respondent has proved the nature of injuries and the treatment taken by him by producing relevant documents and examining doctor, P.W.2 who has categorically stated the nature of injuries and surgeries undergone by the first respondent. P.W.2 has also deposed that further surgeries have to be done to the first respondent which would cost a sum of Rs.1,25,000/-.

16. Considering the evidence of the doctor and also the fact that the first respondent was taking treatment for about four to five months and that the first respondent is unable to do any work, as done earlier, the tribunal has adopted multiplier method. It is well settled law that in a given case, multiplier method can be adopted. In the present case, the doctor has assessed the

disability of the first respondent as 75%. However, the tribunal reduced the disability sustained by the first respondent to 40% and fixed the monthly income of the first respondent as Rs.2,000/-. Taking into consideration the age and income of the injured, the tribunal adopted correct multiplier 17 and awarded a sum of Rs.1,65,200/- ($\text{Rs.2,000} \times 12 \times 17 \times 40\%$ disability) towards loss of income which seems to be very reasonable.

17. Similarly, the tribunal has rightly awarded a sum of Rs.15,000/- towards medical expenses, transportation, extra nourishment and damages to clothes and hence the same is confirmed. For Pain & Suffering, a sum of Rs.30,000/- has been awarded by the tribunal which is also confirmed. Hence, in my considered opinion, the amount of compensation awarded by the tribunal at Rs.2,08,200/- alongwith interest @ 7.5% from the date of petition till the date of deposit seems to be very reasonable and hence the same is confirmed.

18. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

19. The appellants are directed to deposit their share of the award amount alongwith interest and costs, as per the order of the tribunal, within a period of four (4) weeks from the date of receipt of a copy of this order, if not

already deposited. On such deposit, the first respondent/claimant is permitted to withdraw the amount alongwith interest and costs, less the amount already withdrawn, if any.

03.04.2017

Speaking/Non-speaking order
Index : Yes/No
rgr

To

The II Additional Subordinate Judge,
Motor Accident Claim Tribunal,
Villupuram.

V.M.VELUMANI, J.

rgr

Judgment in
C.M.A.No.38 of 2010

03-04-2017

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