

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.NO.3035 OF 2008

K.Saravanan

...Appellant/ Petitioner

Vs.

1. R.Nandan

2. United India Insurance Co. Ltd.,
office, Katpadi Road, Vellore - 4.

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988, against the Judgment and Decree dated 09.03.2005 made in M.C.O.P No.244 of 2000 on the file of M.A.C.T. Sub-Judge, Ranipet, Vellore District.

For Appellant : Mr.C.Prabakaran

For Respondents : R1-Not Ready

Mr.S.Arunkumar for R2.

JUDGMENT

The appellant is the claimant in M.C.O.P. No.244 of 2000 on the file of the Subordinate Judge, Motor Accident Claims Tribunal Ranipet, Vellore District. The appellant filed the above Claim Petition under Section 166(A) of the Motor Vehicles Act, 1988, seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 27.11.1999.

सत्यमेव जयते

2.The brief case of the appellant/claimant is as follows:

On 27.11.1999, the appellant/claimant was travelling as a passenger in an auto bearing Registratiion No. TN 23C 6704 on M.P.T. Road and when he was nearing Kilmanalur junction, the driver of the auto drove the vehicle rashly and negligently without any headlight and hit a tamarind tree that was standing on the left hand side of the road, as a result whereof, the appellant/claimant sustained injuries all over his body. Immediately, he was rushed to a nearby hospital. According to the appellant/claimant, the rash and negligent driving of the driver of the auto bearing Registration No. TN 23C 6704, was the cause of accident and that, since the said auto was insured with the second respondent/United India Insurance Co. Ltd.,

Vellore, both of them are jointly and severally liable to pay compensation to the appellant/claimant.

3.The owner of the auto, namely, the first respondent remained absent before the Motor Accident Claims Tribunal and therefore, he was set exparte. The second respondent / United India Insurance Co. Ltd., contested the claim petition by filing a counter. The Tribunal, after analysing the evidence on record, awarded a compensation of Rs.40,000/- to the appellant/claimant together with interest at the rate of 9% per annum for the injuries sustained by the appellant/claimant. However, the Tribunal exonerated the second respondent / The United India Insurance Company from paying any compensation, since, there was violation of policy conditions as the driver of the auto drove the auto without headlight during night hours. Aggrieved over the orders passed by the Tribunal, the appellant/claimant has filed the present appeal.

4.Mr.C.Prabhakaran, learned counsel appearing for the appellant / claimant contended that the Tribunal should have directed the Insurance Company to pay the entire compensation to the appellant/claimant and thereafter, recover the same from the owner of the vehicle and that the Tribunal has committed a gross error of dismissing the claim petition against the second respondent/ Insurance Company.

5.Per contra, learned counsel appearing for the second respondent would contend that, the Tribunal has passed the said order exonerating the Insurance Company based on the legal principles which were in vogue at that point of time. He would further contend that the legal position as far as the violation of policy condition is settled now.

6.It is clear from the records that the driver of the auto had driven the auto without headlights. In fact, the appellant/claimant in his evidence before the Tribunal has deposed that he requested the auto driver to take the auto after repairing the headlights and that the auto driver did not pay heed to his words and drove the auto and hit the tamarind tree standing on the left hand side of the road. Therefore, it is clear from the records that the driver of the auto had violated the insurance policy condition. However, in such circumstances, the Tribunal should have directed the second respondent/United India Insurance Company to pay the compensation at the first instance and recover the same from the owner of the vehicle. Since recourse to pay and recovery has not been adopted in the instant case, the order passed by the Tribunal is liable to be set aside.

7.As far as the quantum of compensation is concerned, no arguments were advanced by both counsels. However, a perusal of the award passed by the Tribunal shows that the Tribunal has considered the medical records and awarded the compensation of Rs.40,000/-, which cannot said to be either too meagre or on the higher side. The Tribunal has awarded interest at the rate of 9%, which has to be reduced to 7.5% per annum.

8. In the result, the appeal is allowed and the second respondent/United India Insurance Co. Ltd.,Vellore, is directed to pay the compensation amount of Rs.40,000/- (Rupees Forty Thousand only) together with interest at the rate of 7.5% per annum, to the appellant/claimant and then recover the same from the owner of the auto bearing Registration No. TN 23C 6704 in the same proceedings. No costs.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

bga
To

The Subordinate Judge,
Ranipet, Vellore District.

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

+1cc to Mr.S.Arunkumar , Advocate SR.No. 85762

+1cc to Mr.C.Prabakaran , Advocate SR.No. 85956

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A.SK (04/07/2019)

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