

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3129 of 2008 and  
MP No.1 of 2008

M/s The Oriental Insurance Company Limited,  
707, Avinashi Road, Coimbatore. .... Appellant/2nd respondent

Vs.

1. K.Senthilkumar ....1st respondent/claimant

2. Shanmugasundaram  
(2nd respondent remained absent and  
was set exparte in the trial court)  
....2nd Respondent/1st respondent

PRAYER: This Civil Miscellaneous Appeal has been filed under  
Section 173 of the Motor Vehicles Act, 1988, against the Award  
dated 20.10.2004 passed in M.C.O.P.No.629 of 2001 by the Motor  
Vehicle Accidents Claims Tribunal, Fast Track Court No.4,  
Tiruppur.

For Appellant : Mrs.R.Srividhya

For 1st Respondent : No appearance

Second Respondent : Exparte

J U D G M E N T

The Oriental Insurance Company Limited, Coimbatore,  
who is the 2nd respondent in MCOP No.629 of 2001 on the file of  
the Motor Accident Claim Tribunal, Fast Track Court No.4,

Tiruppur has filed the present appeal under Section 173 of the Motor Vehicles Act.

2. The claimant/first respondent filed a claim petition under Section 166(1)(A) of Motor Vehicles Act in MCOP No.629 of 2001 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 01.06.2001.

3. The brief case of the claimant is as follows. On 01.06.2001, the claimant was riding his two wheeler bearing registration No.TN-38-Z-1512 on Karichipalayam-Varadapalayam road, Tiruppur. When he was nearing Varadapalayam Palli at about 9.30 p.m., another two wheeler bearing registration No.TN-38-F-5374 belonging to the second respondent came rashly and negligently and hit the two wheeler bearing registration No.TN-38-Z-1512 ridden by the claimant, as a result of which he sustained injuries all over his body. According to the claimant/first respondent, the rash and negligent driving of the rider of the two wheeler bearing registration No.TN-38-F-5374 was the cause of the accident and that since the said vehicle was insured with the 2nd respondent, both of them are jointly and severally liable to pay compensation to the claimant.

4. In the trial court, the owner of the two wheeler remained absent and therefore he was set exparte and the appellant herein resisted the claim petition by filing a counter affidavit.

5. After analysing the evidence on record, the tribunal awarded a compensation of Rs.1,87,305/- to the claimant with interest at the rate of 9% per annum. Aggrieved over the order passed by the tribunal, the appellant has filed the present appeal questioning their liability to pay compensation to the claimant.

6. A specific plea was taken by the appellant/2nd respondent in their counter affidavit that the two wheeler bearing registration No. TN 38-F-5374 was not involved in the accident and therefore, they are not liable to pay any compensation to the claimant/ first respondent. The trial court has held that the rider of the two wheeler bearing registration No. TN-38-F-5374 was responsible for the accident and directed the owner of the said vehicle as well as its insurer, the present appellant to pay compensation to the claimant jointly and severally.

7. Mrs. Srividya, learned counsel appearing for the appellant would contend that the first information report was registered only on 08.06.2001 for the accident that took place

on 01.06.2001 and that the registration number of the vehicle was not indicated in the first information report. Her specific contention is that when the motor 'vehicle inspector's report' Ex.A2 would clearly go to show that there was no damage in both the vehicles, the tribunal was wrong in fixing the responsibility on the owner of the two wheeler bearing registration No. TN-38-F-5374 and its insurer/present appellant.

8. Though the first information report was lodged belatedly after lapse of one week, the Sub Inspector of Police, Karumathampatti Police Station, after completing investigation laid a final report (Ex.A7) on 16.07.2001 against the rider of the two wheeler bearing registration No. TN-38-F-5374 for the offences punishable under Sections 279, 338 (2 counts) of the Indian Penal Code and the rider of the two wheeler namely Balasubramanian s/o Subramanian also pleaded guilty of the offences punishable under Section 279 and 338(2 count) of IPC. The learned Judicial Magistrate, Avinasi found him guilty of the offences punishable under Section 279 and 338 (2 counts) of IPC and sentenced him to pay a fine of Rs.1,100/- and in default to pay fine amount, to undergo simple imprisonment for a period of one month. This is evidenced by a copy of judgment (Ex.A8) passed in C.C.No.189 of 2001 on the file of the Judicial Magistrate, Avinasi. Thus, the first respondent / claimant had produced sufficient evidence to show that the rider of the two wheeler bearing registration TN-38-F-5374 was responsible for the accident and no contra evidence was adduced on the side of the present appellant as well as the owner of the said two wheeler. No investigation report was filed by the present appellant and the final report filed by the Sub Inspector, Karumathampatti Police Station cannot be simply brushed aside, merely based on the delay in lodging the complaint. Therefore, the findings given by the tribunal cannot be interfered with.

9. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel for the appellant. In fact, the first respondent/ claimant did not file any cross objection/appeal against the quantum of compensation passed by the tribunal and also there is no appearance on his behalf. Therefore, I feel, it is not necessary to upset the award passed by the tribunal.

10. In the result,

(i) The appeal is dismissed. No costs.

(ii) The award passed by the Motor Accident Claims Tribunal, Tiruppur in MCOP No.629 of 2001 on 20.10.2004 is upheld and the appellant/2nd respondent is directed to deposit the entire compensation of Rs.1,87,305/- along with accrued

interest, less the amount already deposited, within a period of four weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant/2nd respondent, the claimant is at liberty to withdraw the same, after following due process of law.

(iv) The connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

mst

To

Motor Accidents Claims Tribunal,  
Fast Track Court No.4, Tiruppur.

Copy To : The Section Officer, VR Section, High Court, madras.

+1cc to Mr.R.Sreevidhya, Advocate SR.No.87037

CMA.No.3129 of 2008 and  
CMP No.1 of 2008

SPD (CO)  
GMY (20/02/2019)

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