

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 27.08.2018 (Monday)

JUDGMENT PRONOUNCED ON : 26.11.2018 (Monday)

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN
Civil Miscellaneous Appeal No.1360 of 2011
and
Cros.Obj.No.169 of 2011
and
MP.No.1 of 2011

1. Abdul Khadar

2. The New India Assurance Co Ltd

... Appellants in CMA &
Respondents in Cross Objection

Versus

Kandasamy ... Respondent in CMA &
Cross Appellant in Cross Objection

PRAYER : Civil Miscellaneous Appeal and Cross Objection filed as against the judgment and decree dated 19.05.2010 made in MCOP. No.42 of 2009 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.4, Additional District Judge, Erode.

For Appellants in CMA and
Respondents in Cross Objection: Mr. M. Krishnamoorthy

For Respondent in CMA and
for Cross Objection : Mr. C. Kulanthaivel

COMMON JUDGMENT

This Civil Miscellaneous Appeal is filed by the owner and the insurer of the vehicle bearing Reg.No. TN 33 AJ 225 and cross objection No.169 of 2011 is filed by the cross objector / petitioner, challenging the Judgment and decree dated 19.05.2010 decided in MCOP No. 42 of 2009 on the file of Motor Accidents Claims Tribunal / Additional District Court, Erode.

2) For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal.

3) It is the case of injury. The case of the Claimant is that on 01.09.2008 at about 5.45 pm, when the claimant was standing on the left side of the Perundurai main Road, near Palaniandavar hardware along with his bicycle, a tempo Van bearing Reg.No.TN 33 AJ 0225 came in a rash and negligent manner

and hit against the claimant's bicycle. Due to the accident, the claimant fell down and sustained injuries on his left shoulder, left leg, left front head and all over the body. Immediately after the accident, he was admitted in Government Hospital, Erode and subsequently, he took treatment as inpatient and he spent Rs.76,000/- for medical expenses. According to him, the alleged accident had occurred due to the rash and negligent act of the Tempo driver, further the 1st respondent is the owner of offending vehicle and the 2nd respondent is the insurer of the said vehicle. For the said accident, a case has been registered in Cr.No. 636 of 2008 under Sections 279, 337 of IPC by SHO, Erode North Police station. In the claims Tribunal, the claimant filed an application under Section 166 of MV Act claiming Rs.3,00,000/- as total compensation for the injuries sustained by him. After elaborate enquiry, the Claims Tribunal determined Rs.87,253/- as total compensation. Further the claims Tribunal holding that the claimant is also responsible for the accident and accordingly after deducting 50% of the compensation for the negligence committed by the claimant awarded Rs. 43,626/- as a compensation to the claimant.

4) Opposing the claim made by the claimant, the 1st respondent has filed a Counter statement stating that, at the time of occurrence, one mini auto hit against the claimant's bicycle and ran away from the occurrence place. Only on humanitarian ground, the driver of the Tempo admitted the claimant in a Hospital. But, without knowing the correct picture, the police officer registered the false case against the driver of the Tempo.

5) The 2nd respondent has also opposing the claim made by the claimant stating that the owner of the Tempo, (1st respondent) violated the policy conditions. According to him, the income of the claimant, age, avocation are all disputed. The amount claimed by the claimant in various heads are excessive. Thus, the 1st and 2nd respondents sought for the relief of dismissing the claim petition.

6) Before the Tribunal, the claimant examined himself as PW 1, and the Doctor who issued the Disability Certificate to PW 1 was examined as PW 2. Further, on the side of the claimant, 15 documents are exhibited as Ex.P.1 to Ex.P.15. On the side of the respondents, the 1st respondent has been examined as RW 1 and the Doctor who initially treated the claimant was examined as RW 2. Further, the Officer of the 2nd respondent Insurance Company was examined as RW 3 and in order to substantiate the defense, now stated by the respondents, RW 3 has produced 8 documents as Ex.R.1 to Ex.R.8. After elaborate enquiry, as already stated, the Claims Tribunal awarded Rs.43,626/- as a compensation to the Claimant payable by the 1st

and 2nd respondents. Aggrieved over the said findings of the Tribunal, the 1st and 2nd respondents have come forward with this Civil Miscellaneous Appeal. The respondent in this Civil Miscellaneous Appeal and the Cross Appellant in Cross Objection has come forward with a prayer to enhance the award amount awarded by the Tribunal.

7) The learned Counsel appearing for the 1st respondent / owner of the offending vehicle contended that the Tribunal, without considering the circumstances and the evidences given by the respondent side witnesses, wrongly fixed the negligence on the 1st respondent driver to the tune of 50% and awarded a higher amount of compensation without any basis.

8) The learned Counsel appearing for the 2nd respondent would contend that, since the owner of the vehicle violated the policy conditions, the insurance Company is not liable to pay any compensation, however the claims Tribunal without considering those aspects directed the 2nd respondent to pay the compensation, which is erroneous in law. Accordingly, both the appellants sought for setting aside the award passed by the Tribunal by entertaining this appeal.

9) Per contra, the learned counsel appearing for the claimant contended that the Tribunal has correctly fixed the quantum of compensation and wrongly hold as in the accident, the negligence of the claimant to the extent of 50% are also involved, which is erroneous one. Thus, the claimant sought for enhancing the quantum of compensation.

10) In respect to the contention raised by the 1st respondent, it is necessary to see, whether the vehicle owned by the 1st respondent is involved in this case or not. In this respect, it is an admitted fact that the case has been registered on the next day of the accident. The Motor Vehicle Inspector has also examined the vehicle on the next day. Further, the Doctor, who initially treated the claimant has specifically stated that at the time of accident, the claimant was under the influence of alcohol. But, those circumstances will not prove, that only in order to claim the compensation, a false case has been registered. Even though, the driver of the offending vehicle has stated in his evidence that a mini Auto ran before his vehicle alone caused the accident, if it is true, nothing was prevented him to lodge a complaint against the driver of mini auto, after mentioning the registration number of the mini auto, but in this case, even after knowing that the case has been registered against him, he has not raised any objection. Further more, after knowing the entire facts, the Insurance Company had not preferred any complaint against the claimant for filing bogus claim petition. So, without any

material, based on the evidence given by RW 1, this Court cannot come to the conclusion that the false case has been registered against the driver of the Tempo.

11) On the side of the respondents, the statements given by the claimant, one Selvam, Senthil, Srirangan and Murugesan, who are all the witnesses examined by the Police, for the occurrence mentioned in the claim petition have been marked as Ex.R.3 to Ex.R.7. Even though, the said exhibits may be the documents related to the case registered for the occurrence mentioned in this case, before the Tribunal, those documents have not been marked through the author of the said documents. Moreover, the said documents were not subjected to the cross examination. In the said circumstances, we cannot hold that the contents of the said statements are true one. So those documents are not at all relevant for considering the contention raised by the 1st respondent. Accordingly, this Court came to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the Van.

12) Secondly, the Doctor, who treated the claimant in Government Hospital, Erode has been examined before the Claims Tribunal as RW 2. In his evidence, he has stated that on the day of occurrence, within 15 minutes from the time of accident, he examined the claimant. He further deposed that at the time of examination, he found the claimant with injuries all over the body and he was under drunken mood. But at the same time, in his cross examination, he has specifically stated that in order to find out whether the claimant was under the influence of alcohol or not, no blood test was conducted. In this regard, he has stated that the percentage of alcohol found in the blood to be confirmed only after conducting the blood test. So without conducting the necessary examination, the evidence given by RW 2 that the claimant is under the influence of alcohol can not be accepted. The Claims Tribunal only by influencing the evidence given by RW 2, came to the conclusion that the negligence of the claimant is also took part in the accident occurred. As per the above discussion, I am of the considered opinion that the findings arrived at by the claims Tribunal needs interference and accordingly, I hold that the evidence given by the respondents did not prove the negligence committed by the claimant at the time of accident. Accordingly, this Court held that only due to the rash and negligent act of the 1st respondent's driver, the accident had occurred. For which, both the respondents are jointly and severally liable to pay the compensation to the claimant.

13) In respect to the quantum of compensation, the Claims Tribunal came to the conclusion that the claimant sustained permanent partial disability to the tune of 24% and fixed

Rs.48,000/- as a compensation, Further, the claims Tribunal determined Rs.22,253/- towards the medical expenses and Rs.10,000/- for the pain and sufferings. Moreover Rs.5,000/- was awarded under the head of extra nourishment. In respect to the above findings, since the alleged accident has happened in the year of 2009, fixing Rs.2000/- per percentage of disability does not need any interference. The evidence given by PW 2 shows that the claimant is having 25% permanent partial disability. Accordingly, the evidence given by the Doctor is fully considered by the Claims Tribunal and fixed Rs. 48,000/- as a compensation towards disability is reasonable and justifiable. Further, the compensation fixed under the other heads are also unaltered.

14) In the light of the said discussions, this Court came to the conclusion that the accident occurred only due to the rash and negligent act of the vehicle owned by the 1st respondent. The findings arrived at by the Claims Tribunal in respect to the negligence of the claimant to the tune of 50% is set aside. In otherwise, the entire compensation fixed by the Claims Tribunal is unaltered.

15) The 2nd appellant / Insurance company is directed to deposit the entire award amount i.e Rs.87,253/- along with interest and costs as ordered by the Tribunal, less the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

16) In the result, the Civil Miscellaneous appeal is dismissed and the Cross Objection No.169 of 2011 is allowed. Consequently, the connected Miscellaneous petition is disposed off. There shall be no order as to costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal / Additional District Judge,
Erode.

Copy to

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

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