

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 01.11.2018

JUDGMENT PRONOUNCED ON : 26.11.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A.No.1744 of 2011

K.Shanmugam .. Appellant / Claimant

versus

1.S.Venkatesan

2.Reliance General Insurance Co. Ltd.,
Unit-I, 3rd Floor, No.23,
Spur Tank Road,
Chetpet, Chennai - 600 031.
Now operating from
Plot No.2054, Rais Towers, 2nd Floor,
Next to G.R.T.Jewellery,
2nd Avenue, Anna Nagar,
Chennai - 600 040. .. Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.11.2010 passed in M.C.O.P.No.444 of 2008 on the file of the Motor Accidents Claims Tribunal [In the Court of Small Causes], Chennai.

For Appellant : Mr.S.Gangaram Prasad

For Respondent No.1 : Exparte

For Respondent No.2 : Mr.S.Arun Kumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant [claimant], challenging the judgment and decree dated 30.11.2010 passed in M.C.O.P.No.444 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judge, [In the Court of Small Causes], Chennai.

2. For the sake of convenience hereinafter the parties are referred to, as per their litigative status before the Tribunal. It is a case of injury. The case of the claimant is that, on 22.11.2007 at about 22.00 hours, while he was driving the two-wheeler bearing Registration No.TN-20-AY-2288 along with his friend [P.Ramesh], who is the deceased in M.C.O.P.No.448 of 2008 as a pillion rider from south to north in Madhavaram High Road [near St. Antony Higher Secondary School], Chennai, a Van bearing Registration No.TN-22-R-2173 owned by the first respondent, and insured with the second respondent, came from the opposite direction in a rash and negligent manner particularly on the extreme wrong side of the said road and dashed against the two-wheeler, due to the said accident, the claimant sustained fractures all over the body, further the pillion rider was died in the Hospital. At the time of accident, the claimant is aged about 23 years, he was working as a courier boy and earned Rs.5,000/- per month, he filed a Claim Petition before the Claims Tribunal under Section 166 of the Motor Vehicles Act, in which, he is claiming compensation of Rs.6 lakhs for the injuries sustained by him.

3. Per contra, opposing the claim of the claimant, by filing counter, the second respondent [Insurance Company] disputed the claim of the claimant, he denied the manner in which the accident had occurred, further, the age, avocation and income of the injured are denied. According to him, since the cheque issued by the first respondent towards the premium of insurance was dishonoured, the policy issued to the offending vehicle was cancelled on the date of accident. Therefore, on the date of accident, the policy is not in force and thus, the second respondent sought for dismissal of the Claim Petition.

4. Before the Claims Tribunal, the Claim Petition filed by the the parents of the deceased in M.C.O.P.No.448 of 2008 has been tried along with this Claim Petition. In order to prove the claim, the claimant examined himself as P.W.2 and the Doctor, who issued a Disability Certificate was examined as P.W.3, further, 17 documents were marked as Ex.P.1 to Ex.P.17. On the side of the respondents, neither oral nor documentary evidence was let in. The first respondent remained exparte.

5. The Claims Tribunal, after analysing the evidence adduced on the side of the claimant came to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the first respondent. Further, it was concluded that, the cancellation of the policy alleged in the counter by the second respondent has not been proved by the Insurance Company, and hence, the first and second respondents are jointly and severally liable to pay compensation to the claimant, and

finally, directed the second respondent to pay the compensation to the claimant on behalf of the first respondent. Aggrieved over the said finding, the claimant has come forward with the present Civil Miscellaneous Appeal, in which he is seeking the relief to enhance the award amount.

6. When the appeal is taken up for consideration, I have heard the arguments of Mr.S.Gangaram Prasad, learned counsel appearing for the appellant, Mr.S.Arunkumar, learned counsel appearing for the second respondent and also perused the records carefully.

7. In respect to the negligent aspect, the claimant [P.W.2] has clearly gave evidence before the Claims Tribunal as the van owned by the first respondent came from opposite direction in a rash and negligent manner and hit against his motorcycle. The said evidence was corroborated through the contents of the First Information Report [Ex.P.1]. It is true in order to dispute the evidence given by P.W.2 as well as to deny the averments made in the First Information Report, nobody has been examined on the side of the respondents, so the conclusion arrived at by the Claims Tribunal that the accident had occurred only due to the rash and negligent act of the first respondent's driver is logically and factually correct and the view taken by the Claims Tribunal is affirmed by this Court.

8. Secondly, it was alleged in the counter filed by the second respondent that, the policy issued to the offending vehicle was cancelled on the date of accident, but in order to prove the same, no evidence was adduced on the side of the Insurance Company, further the document related to the cancellation of policy has also not been marked before the Claims Tribunal. So without any evidence to prove the plea taken in the counter mere oral submission before the Court cannot be accepted. Therefore, in this aspect also, the Claims Tribunal came to the correct conclusion that both the respondents are jointly and severally liable to pay the compensation. Hence, the findings arrived at by the Claims Tribunal in respect to the direction given to the second respondent is affirmed by this Court.

9. In respect to the quantum of compensation, the Claims Tribunal has awarded total compensation of Rs.1,50,000/- under various heads.

10. Initially, the Claims Tribunal determined Rs.45,000/- is the compensation under the head of Disability. In respect to the said amount, the learned counsel appearing for the claimant made a submission before the Court that the said amount is very meager for compensating the Disability sustained by the injured. Now on going through the evidence given by the

Doctor [P.W.3], he has clearly stated before the Claims Tribunal that the claimant suffered 45% of disability, however, the evidence given by the claimant and the Doctor did not disclose that the claimant suffered functional disability. Accordingly for calculating the compensation under the head of Disability, this Court decided to fix Rs.1,500/- per percentage of disability and calculated as follows:

$$\text{Rs.1,500/-} \times 45 = \text{Rs.67,500/-}$$

11. Now on going through the evidence of P.W.2 and P.W.3, the claimant was under treatment from 22.11.2007 to 26.11.2007 in Government Stanley Medical College Hospital, Chennai, thereafter, he was taken treatment at Putur and then admitted in Malar Hospital as inpatient from 19.03.2008 to 22.03.2008. Further, he finally admitted in Helious Multispeciality Hospital as inpatient from 30.04.2009 to 01.05.2009. Therefore, the amount of Rs.30,000/- is sufficient to compensate the loss of earning during the period of treatment. Further, the Claims Tribunal after analysing the various aspects allowed the compensation under various heads, which does not need any changes. Hence, I am of the considered opinion that except to award Rs.67,500/- under the head of permanent disability, no other changes is needed in the amount awarded on other heads. Accordingly, the modified compensation payable to the injured [claimant, K.Shanmugam] is as under:

Head	Amount (Rs.)
Loss of earning during treatment period	30,000.00
Transport to hospital	10,000.00
Extra-nourishment	5,000.00
Damage to clothing and articles	1,000.00
Medical expenses Rs.43,873.65 rounded off	44,000.00
Attendant Charges	5,000.00
Pain and Suffering	10,000.00
Continuing and Permanent disability	67,500.00
Total	1,72,500.00

12. In the result,

[i] The Civil Miscellaneous Appeal is allowed;

[ii] The award amount is enhanced to Rs.1,72,500/- from Rs.1,50,000/-. The claimant in M.C.O.P.No.444 of 2008 is

entitled to award amount of Rs.1,72,500/- [Rupees One Lakh Seventy Two Thousand Five Hundred only] with 7.5% interest per annum from the date of petition till the date of realisation.

[iii] The second respondent [Insurance Company] is directed to deposit the award amount along with accrued interest and cost with a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the appellant [claimant, K.Shanmugam] in this appeal is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri
To

The Motor Accidents Claims Tribunal
[Court of Small Causes],
Chennai.

Copy To:
The Section Officer,
V.r.Section, High Court, Madras.

Judgment in
C.M.A.No.1744 of 2011

VD(CO)
CSL/13.03.2019

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