IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1334 of 2018
and
CMP.No.10733 of 2018

M/s.Reliance General Insurance Co. Ltd.,
Salem.
(Exparte before lower court)
... Appellant/2nd respondent

..vs..

1.Chennappan ... Ist respondent/Petitioner

2.Ahamed Basha & RCC ... 2nd Respondent/1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 17.01.2018, made in MCOP.No.1403 of 2014 on the file of the Motor Accident Claims Tribunal/(Special Sub Judge), Dharamapuri.

For Appellant : Mr.S.Arunkumar
Respondents : Mr.S.Doraisamy for R-1

JUDGMENT

Aggrieved over the finding of the Tribunal dated 17.01.2018, made in MCOP.No.1403 of 2014 on the file of the Motor Accident Claims Tribunal/(Special Sub Judge), Dharamapuri, the 2nd respondent-Insurance Company filed this present appeal to set aside the award passed by the Tribunal.

2.By both side consent, this appeal is disposed of at the time of admission stage itself.

3.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4.The case of the petitioner is that on 03.04.2011, while the petitioner was proceeding as cleaner in the first respondent lorry bearing Registration No.TN-28-C-1499, in Tindivanam - Thiruvannamalai N.H., while going near Om Sakthi Kovil, in Kadambai Village, the driver of the said lorry stopped the vehicle on the left side mud portion of the road and went to the temple. The petitioner was sitting in the vehicle and at about 11.00 p.m., another Lorry bearing Registration No.KA-01-B-9226, came in the same direction at high speed dashed against the parked lorry in which the petitioner was sitting causing multiple grievous injuries. The back side of the lorry was completely damaged. The driver of the offending vehicle also suffered injury. Immediately after the accident, the petitioner was admitted in Government Hospital, Thiruvannamalai and after getting first aid treatment went to CMC Vellore, where he took treatment as inpatient from 04.04.2011 to 12.05.2011. The accident occurred due to the negligence of the first respondent lorry driver. Due to the injuries, the petitioner's kidney was affected and suffered injury in the stomach also. The petitioner was aged 21 years and by working as cleaner was earning a sum of Rs.7,500/- per month. Due to the injuries suffered, he is unable to do any work and he suffered loss of income. Thus, the petitioner sought for a sum of Rs.10,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

5.On the other hand, opposing the claim petition, the Second respondent-Insurance Company by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The driver of the lorry bearing Registration No.KA-01-B-9226 was proceeding at normal speed and he was not responsible for the accident. The said lorry was not insured with the second respondent Insurance Company at the time of the accident. The driver of the first respondent lorry driver did not possess valid driving licence. The claim of the petitioner about the injuries suffered, period of treatment, expenditure incurred, age, avocation and income are all denied. The claim of the petitioner is exorbitant. Thus, the second respondent-Insurance Company sought for dismissal of the claim petition.

6.Before the Tribunal, the injured petitioner examined himself as P.W.1, produced documents Ex.P1 to Ex.P11 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

7.The Tribunal, on the basis of materials available on record, found the negligence of the first respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.6,75,660/- as compensation to the petitioner. Aggrieved over

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

the said findings of the Tribunal, the second respondent Insurance Company has come forward with the present appeal.

8.Heard the learned counsel appearing for the appellant/second respondent-Insurance Company and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

9.The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the Tribunal erred in fixing negligence on the first respondent vehicle driver on the basis of P.W.1 evidence and unproved contents of Ex.P1 FIR. The driver of the lorry, in which the petitioner was seated also contributed equally to the accident. The Tribunal awarded very high amount as compensation. The percentage of disability arrived at by the Tribunal is not proper. Thus, the appellant/second respondent Insurance Company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

10.Per contra, the learned counsel appearing for the petitioner/ claimant contends that the accident occurred due to the negligence of the first respondent vehicle driver only. The Tribunal, on the basis of evidence on record, correctly concluded and fixed negligence on the first respondent vehicle driver, passed an award providing just and fair compensation. There is no need to interfere with the same. Thus, the petitioner/claimant sought for dismissal of the appeal.

11.The accident occurred in 2011 and the petitioner has clearly stated that he was sitting in the lorry parked on the mud portion of the road and the offending vehicle dashed on the back side of his lorry. The police also registered Ex.P1 First Information Report against the first respondent vehicle driver only. Nothing is stated by the respondents about the petitioner's vehicle being parked on the middle of the road or it was moving at the time of the accident. It is therefore clear that the vehicle in which the petitioner was sitting was parked on the left side mud portion of the road. Further, the respondent has not examined the first respondent vehicle driver or any other person to contradict P.W.1 evidence. As such, it is clear from the oral evidence of P.W.1 and the contents of Ex.P1 FIR that negligence of the first respondent vehicle driver alone caused the accident. The conclusion of the Tribunal in that regard is appropriate and does not require any interference.

12.The Tribunal has passed an award for a sum of Rs.6,75,660/- and the second respondent Insurance Company has not seriously disputed the quantum of award arrived at by the Tribunal. The petitioner has suffered multiple grievous injuries and the same is evidenced by Ex.P2 wound certificate. He has also taken treatment as inpatient as evidenced by Ex.P3

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Discharge Summary. The Tribunal has fixed the disability suffered by the petitioner on the basis of Ex.P10 disability certificate issued by Government Hospital, Dharmapuri and fixed the disability at 30%. There is no contra evidence to the same and the Tribunal provided for a sum of Rs.3,000/- per percentage (30% x Rs.3000/- = Rs.90,000/-) and a sum of Rs.90,000/- is provided for permanent disability. The petitioner was employed as cleaner. As such the Tribunal fixed his monthly income at Rs.6,000/- and the same is appropriate. Likewise, the petitioner produced Ex.P7 and Ex.P8 medical bills, in support of the expenses incurred by him. The Tribunal after analyzing the same, accepted the medical bills and provided for Rs. 5,12,660/- towards medical expenses. Therefore, no ground is made out by the second respondent Insurance Company to modify the same. Likewise, the Tribunal has provided a sum of Rs.35,000/- towards pain and sufferings, Rs.5,000/- towards Transportation, Rs.5,000/- towards attender charges, Rs.10,000/- towards Extra -nourishment and a sum of Rs.18,000/- towards loss of income during treatment period. The appellant/2nd respondent Insurance Company has not seriously disputed the same. On the careful analysis of evidences on record, the Tribunal is justified in awarding the above said amount and there is no reason to interfere with the same. Thus, the quantum of Award passed by the Tribunal, awarding Rs.6,75,660/- to the petitioner is just and proper and the same is confirmed. No ground is made out by the appellant/2nd respondent Insurance Company to entertain the appeal. Therefore, this Court find no merits in the appeal and the same is deserves to be dismissed.

13.The learned counsel appearing for the appellant/second respondent Insurance Company contended that two vehicles are involved in the accident and as the owner and insurer of the other vehicle is not impleaded, liberty must be given to this respondent to sue the other tort-feasor in independent proceedings as per law, so as to make him liable for paying compensation. In support of his contention, the learned counsel appearing for the appellant-Insurance Company relied on the ruling reported in 2015 (9) SCC 273 in KHENYEI Vs. NEW INDIA ASSURANCE COMPANY LIMITED AND OTHERS, wherein it is held as follows:-

> "22.3 In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the Court/Tribunal to determine inter se extent of composite negligence of the driver. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of the payment to the plaintiff/claimant to the extent it has

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

satisfied the liability of the other. In case both of them have been impleaded and the appointment/extent of their negligence has been determined by the court/Tribunal, in the main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

22.4. It would not be appropriate for th Court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award."

Considering the above said decision and the facts of the case on hand, the Tribunal has held that the negligence of the first respondent vehicle driver alone caused the accident. However, as the other vehicle owner involved in the accident is not made a party, following the above said ruling, the present appellant/second respondent Insurance Company is at liberty, if law permits to do so, to sue the other vehicle owner and insurer in independent proceedings.

14. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The order and decreetal order dated 17.01.2018, made in MCOP.No.1403 of 2014 passed by the Motor Accident Claims Tribunal (Special Sub Judge), Dharamapuri, is hereby confirmed. Consequently, connected C.M.P. is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rrg

To

1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

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

+1cc to Mr.S.Doraisamy, Advocate sr.no.43925

C.M.A.No.1334 of 2018

nr 07/08/2018

सत्यमेव जयते

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/