

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11.09.2018
Pronounced on	19.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A.No.588 of 2011
&
CROSS OBJECTION No.198 OF 2011

The New India Assurance Company Ltd.,
Chennai.

...Appellant/R2 in CMA.No.588
of 2011/1st respondent in
Cross Obj.198 of 2011

Vs

1. Sivasundaram
rep. by his father
Dr.Sivagnanam

...1st Respondent/Petitioner in
CMA.588 of 2011/
Cross Objector in Cross
Objection No.198 of 2011

2. Thamizharasan

... 2nd Respondent/R2 in
CMA.588 of 2011/
2nd Respondent in Cross
Objection No.198 of 2011

Prayer in CMA.No.588 of 2011 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and decree made in M.C.O.P.No.711 of 2008 dated 30.09.2010 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) Perambalur.

Prayer in Cross Objections No.198 of 2011: Cross Objection filed under Or.41, Rule 22 of CPC against the judgement and decree dated 30.09.2010 in MACT.O.P.No.711/2008 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellant in
CMA.No.588 of 2011/
1st respondent in
Cross Objection : Mr.M.Krishnamoorthy

1st Respondent in
CMA.588 of 2011/
Cross Objector in Cross
Objection No.198 of 2011 : Mr.A.A.Venkatesan

2nd Respondent in
CMA No.588 of 2011/
2nd Respondent in
Cross Objection : R2- Given up

COMMON JUDGMENT

The Civil Miscellaneous Appeal No.588 of 2011 has been filed by the New India Assurance Company and the Cross Objection No.198 of 2011 has been filed by the Objector/claimant challenging the judgement and decree dated 30.09.2010 passed in MCOP No.711 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

2. Herein after, for the sake of convenience, the parties are referred to as per their litigative status before the Claims Tribunal. It is a case of injury. The case of the petitioner is that on 10.01.2006 at 9.15 p.m, in Myladuthurai - Kumbakonam Road, near Royar Agragara Salai, when he was travelling in a Hero Honda motorcycle bearing Registration No. TN 46 B 2982 as a pillion rider, a vehicle bearing Registration No. TN 49 F 1543 driven by its driver from east to west in a rash and negligent manner without following the traffic rules and hit against the motor cycle. Due to the said accident, the claimant sustained injuries and thereafter, he was admitted in Myladuthurai Government Hospital. Subsequent to that, he was referred to Thanjavur Medical College Hospital and Vinothagan Hospital situated at Thanjavur for further treatment. In the accident, the claimant Sivasundaram sustained grievous injury on his head, right rib and right thigh. For the said injuries, he got treatment in the above hospitals and finally, he was admitted in Mercury Nursing Home, Chennai as a inpatient for a period of 1-1/2 months. Till now, the injured is in the stage of coma.

3. Thereby, the father of the injured filed a claim application under Section 166 of Motor Vehicles Act before the Claims Tribunal, Perambalur, claiming compensation of Rs.16,00,000/- for the injury sustained by his son. During the time of accident, the injured was studying Homoeopathy final year in the Medical College situated at Rasipuram. In his college

days, he obtained so many certificates and received Rs.5000/- as stipend per month. For the accident, a case has been registered in Kuttralam Police Station in Crime No.18 of 2006 under Sections 279, 337 of IPC against the driver of the van came in the opposite direction.

4. On the other hand, opposing the claim made by the petitioner by filing a counter, the 2nd respondent/Insurance Company disputed the claim of the petitioner, particularly about the manner in which the accident was occurred. The age of the petitioner, avocation and income of the injured are disputed. The accident had occurred only due to the rash and negligence act of the driver who drove the motorcycle in which, the injured was travelled as a pillion rider. In the said circumstances, the 2nd respondent is not liable to pay any compensation. The petitioner has to prove that the offending vehicle was insured with the 2nd respondent and the driver of the said vehicle possessed with valid and effective license. Thus, the 2nd respondent sought for dismissal of the petition.

5. Before the Tribunal, the father of the injured has been examined as PW1, the eye witness to the occurrence, the police officer who registered a case and the Doctor who issued a disability certificate have been examined as PW2 to PW4 respectively, further on the side of the petitioner, 12 documents were marked as Ex.P1 to Ex.P12 to prove their claim. On the side of the 2nd respondent, the Branch Manager of the Insurance Company has been examined as RW1 and 4 documents were marked as Ex.R1 to R4.

6. After elaborate enquiry, the Claims Tribunal has held that only due to the rash and negligent act of the drivers, who drove the Motorcycle and Mahendra van the accident is occurred. Further, it has been held that both the drivers are having 50% negligence and accordingly, calculated the compensation depending upon the percentage of the negligence.

7. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present CMA No.588 of 2011. Whereas, not being satisfied with the quantum of award, the claimant/petitioner has come forward with the Cross Objection No.198 of 2011.

8. In order to decide the appeal, the following issues were framed:

1) Whether the accident had occurred due to the negligence of both drivers i.e Motorbike and Mahindra van?

2) Whether the quantum of compensation arrived by the Claims Tribunal is found to be correct ?

3) Whether the findings arrived by the Claims Tribunal in respect to the above said issues are found to be correct or not ?

9. In the Claims Tribunal, in order to prove the negligent act of the driver of Mahendra Van, 4 witnesses have been examined on the side of the claimant. Initially, Dr.Sivagnanam, who is the father of the injured was examined as P.W.1. In fact, as per the case of the claimant, he is not an eye witness to the occurrence, only after the accident, he heard about the accident through a third person and he gave necessary treatment to the injured. In the Claims Tribunal, one Muthu was examined as PW2 as an occurrence witness. According to him, within 50 feet from the place of occurrence, he saw the occurrence. He has stated that during the time of occurrence, both the vehicles involved in this accident had come to the opposite direction and dashed against each other. He did not state anything about the registration number of the offending vehicle. He has merely mentioned the serial number of the offending vehicle is 1543. Otherwise, he has specifically stated that the occurrence had happened only in the night hours. Furthermore, in his cross examination, he has stated only after hearing the noise, he went to the occurrence place and saw the occurrence. So, the evidence given by PW2 also did not confirm the particulars of offending vehicle which is responsible for the accident alleged in this claim petition.

10. On the other hand, as per the evidence of PW3, Thiru.Narayanan, who is the retired Police Constable working in Kuthalam Police Station, a case has been registered in Crime No.18/2006 against the driver of the Mahendra van. In the FIR, the name of the driver, registration number of the offending vehicle has not been mentioned. In this occasion, PW3 has stated that only during the time of investigation, it was identified that the vehicle bearing Registration Number TN49 F 1543 is involved in the accident. In the said circumstances, after the registration of the case, the driver of the Mahindra Van employed under the first respondent has paid Rs.900/- as a fine before the Magistrate for the accident mentioned in this claim application. Further, the copy of the charge sheet, the copy of the Motor Vehicle Inspector report, the copy of the case records have been marked as Ex.P6, P8 and P10 respectively. Those documents revealed that the charge sheet pertaining to the occurrence has been filed against the driver of the first respondent and after taking cognizance, he has admitted the offence and paid a fine. In this occasion, it is relevant to see the judgment of this Court in C.M.A.No.1301 of 2002, wherein, it

has been held as follows:

" Even though, plea of Contributory Negligence was pleaded by the Appellant-Insurance Company. It is to be pointed out that the Criminal case in Crime No.665/2000 was registered only against the lorry driver. The driver of the lorry has also admitted the offence and paid the fine. It is pertinent to note, neither the lorry driver nor the other witnesses were examined to substantiate the plea of Contributory Negligence. Pointing out that registration of Criminal case against the lorry driver and that no substantial evidence was adduced by the insured, the Tribunal held that the accident was due to rash and negligent driving of the lorry driver. Since no evidence was adduced on the side of the Appellant, the said findings of the Tribunal cannot be assailed."

In this case also, the driver of the offending vehicle (Mahindra Van) has not been examined as a respondent side witness to establish the contributory negligence, but the Branch Manager of Insurance Company has been examined as RW1. He has denied the accident and stated that after 6 months from the date of accident, the vehicle was sent to RTO Officer for inspection. According to him, a false case has been foisted against the driver of the Mahendra Van in order to claiming compensation. Now, as per the evidence of RW1, he sent a complaint to CBCID and the same was marked as Ex.R4. But, RW1 did not say anything about the action initiated on the complaint given before the CBCID Police. In the said circumstances, nothing was prevented the RW1 to approach this Court for appropriate remedy. So, without taking the effective measures to prove that the accident had not happened, giving evidence as false case has been registered against the appellant is no way helpful to accept the contention raised by the second respondent's counsel. In his cross examination, RW1 has specifically admitted that for verifying the occurrence, the Insurance Company had appointed the Investigating Officer. Further, he has stated that the said Investigating Officer has filed his report. But, the said report has not been produced on the side of the respondent to show the real fact. So, withholding the said document by the respondent proves that the occurrence had happened as per the evidence given by PW1. So, culling out the entire evidence given by either side without any substantial evidence, RW1 has stated before the Claims Tribunal that a false case has been registered for the purpose of claiming compensation. Further, on the side of the respondent, except the copy of the Accident Register and the copy of the Advocate notice, no investigation report has been produced to prove the evidence of RW1. Therefore, the contention raised by the second respondent's counsel is not proved through the evidence given by RW1 and accordingly, this Court held, only due to the rash and negligent act of the driver

of the Mahendra Van, the accident had occurred. It is an admitted fact the first respondent and the second respondent are the owner and insurer of the vehicle respectively. Since the said accident had happened only due to rash and negligent act of the first respondent's driver, both the owner of the vehicle and the insurer are jointly and severally liable to pay the compensation.

12. In respect to the quantum of compensation, the Claims Tribunal determined a sum of Rs.7,81,850/- as a total compensation and directed the 2nd respondent to pay the 50% of total compensation to the claimant. In respect to the injury suffered by the injured, PW4 Dr.Kandeeban, who is the Consultant in Brain and Neuro Science has stated that for the injury sustained in a head, the injured Siva was taking treatment from 10.01.2006 to 08.03.2006. Further, he has stated that the injured was taking treatment in Vinothagan Hospital, Thanjavur, Appollo Hospital and Mercury Hospital, Chennai. According to him, the injured is not in a position to move voluntarily. Further, he is not having any conscious and he is in the stage of coma. In respect to the said evidence, RW1 who is the Branch Manager of the second respondent has also admitted that the injured is in the coma stage. In the evidence of PW4, he has stated that the disability sustained by the injured as 95%. Since the injured is in the coma stage for a very long period, the evidence given by PW4 in respect to the disability is convincing one. The Claims Tribunal has also held the injured sustained 95% disability. It is an admitted fact the said disability is a functional disability. So, it is necessary to arrive the compensation through the multiplier method.

13. In the Claims Tribunal, for arriving compensation Rs.3,000/- has been taken into account as a monthly income of the injured. In respect to the income derived by the injured, PW1 who is the father of the injured has stated that before the accident, he is doing Homeopathy Medicine and received Rs.5000/- as a stipend. But, for proving the said evidence, no documents have been produced on the side of the petitioner. So, without any documents, we cannot come to the conclusion that the injured had earned Rs.5000/- as income per month. Since the accident had happened in the year of 2006, further the age of the injured is 21 at the time of accident, it is appropriate to fix Rs.3000/- as the monthly income of the injured. Moreover, since the injured is aged about 21 years, appropriate multiplier for calculating the compensation is 17. In the said circumstances, the compensation for disability has to be calculated in the following method:

Rs. 3000/- per month x 12 = Rs.36,000/-
Rs.36,000 x 17 multiplier = Rs.6,12,000
Rs.6,12,000 x 95% disability = Rs.5,81,400/-

Therefore, Rs.5,81,400/- is fixed as compensation under the head of permanent disability. Apart from that, from the date of accident to till date, the injured was suffering a lot. So, this Court decided to award Rs.1,00,000/- under the head of pain and sufferings. Moreover, in the Claims Tribunal, the petitioner has produced the medical bills to the tune of Rs.6,72,300/- . The genuinity of the said medical bills are not disputed on the side of the respondent. So, the petitioner is entitled to the said amount. Moreover, Rs.20,000/- awarded under the head of transportation and Rs.50,000/- awarded under the head of future medical expenses are unaltered. Therefore, in the light of the above discussions, the amount of compensation awarded by the Tribunal is modified as follows:

Sl. No.	Head	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of income	Rs. 5,81,400/-	Rs.5,81,400/-
2	Pain and Sufferings	Rs. 20,000/-	Rs.1,00,000/-
3	Extra-Nourishment	Rs. 20,000/-	--
4	Medical Expenses	Rs. 6,72,300/-	Rs.6,72,300/-
5	Transportation	Rs. 20,000/-	Rs. 20,000/-
6	Future Prospects	Rs. 2,00,000/-	Rs. ---
7	Future Medical Expenses	Rs. 50,000/-	Rs. 50,000/-
	Total	Rs 15,63,700/-	Rs.14,23,700/-

14. Accordingly, the compensation of Rs.15,63,700/- is reduced to Rs.14,23,700/-. The 2nd respondent Insurance Company is directed to deposit the modified amount awarded by this Court with interest and costs after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.711 of 2008, within a period of four weeks from the date of receipt of this judgment. On such deposit being made, the Tribunal is directed to transfer 50% of the said compensation amount to the credit of Bank Account stands in the name of Dr.Sivagnanam, through RTGS/NEFT within a period of one week, since he has spent huge money towards the medical expenses to the injured. The remaining amount shall be deposited in any one of the Nationalised Bank as a fixed deposit. The father of the injured is permitted to

withdraw interest derived from the said deposit once in three months.

C.M.A.No.588 of 2011

15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

Cross Objection No.198 of 2011

16. In the result, the Cross Objection is dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Perambalur.

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

+1cc to Mr.Krishnamoorthy, Advocate, S.R.No.78748

+1cc to Mr.A.A.Venkatesan, Advocate, S.R.No.78622

C.M.A.No.588 of 2011
& CROSS OBJECTION NO.198 OF 2011

EV (CO)

GSP (21/12/2018)

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