

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 01.11.2018

JUDGMENT PRONOUNCED ON : 04.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A.No.3461 of 2012

Pandian .. Appellant / Claimant

versus

1.C.S.Baskaran

2.V.Selvasundaram

3.United India Insurance Co. Ltd.,

Muthiah Complex,

Perundurai Road, Erode.

.. Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 05.11.2008 passed in M.C.O.P.No.339 of 2007 on the file of the Motor Accidents Claims Tribunal [Additional District Judge cum Fast Track Court No.IV], Bhavani, Erode District.

For Appellant : Mr.C.Kulanthaivel

For Respondent Nos.1&2 : Given up

For Respondent No.3 : Mrs.R.Srividhya

J U D G M E N T
सत्यमेव जयते

Aggrieved over the award dated 05.11.2008 passed in M.C.O.P.No.339 of 2007 on the file of the Motor Accidents Claims Tribunal [Additional District Judge cum Fast Track Court No.IV], Bhavani, Erode District, the appellant, who is the claimant in the above said MCOP has preferred this Appeal, seeking the relief to set aside the award passed the Claims Tribunal and for enhancing the compensation amount.

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

3. It is a case of injury. The case of the claimant is that, on 28.03.2007 at about 6.00p.m., while he was riding his TVS 50 bearing Registration No.TN-37-H-5529 along with one Sekar as a pillion rider from south to north in Bhavani Main Road, Chinnapanagkuttai, a Car bearing Registration No.TMZ-8999 owned by the second respondent, and insured with the third respondent, came in a rash and negligent manner from opposite direction and hit against the two-wheeler, due to the said accident, both the claimant and the pillion rider sustained grievous injuries all over the body. Immediately, the claimant was admitted in the Government Hospital, Erode and treated as inpatient for a period of 20 days. At the time of accident, he was aged about 32 years and earned Rs.6,000/- per month by doing powerloom works.

4. The claimant filed a Claim Petition before the Claims Tribunal under Section 166 of the Motor Vehicles Act, in which, he is claiming compensation of Rs.3 lakhs for the injuries sustained in the accident. After elaborate enquiry, the Claims Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of drivers of both the vehicles, and fastened 50 : 50 liability on both the drivers and held that the third respondent is liable to pay compensation to the claimant of Rs.43,135/-. Aggrieved over the said findings, the claimant is before this Court with the present Civil Miscellaneous Appeal.

5. Opposing the claim made by the claimant, the third respondent being the insurer of the car, by filing counter, denied the accident itself. It is averred on the side of the third respondent that the first respondent, who is the driver of the car violated the policy conditions and drove the vehicle without any valid and effective license. The nature of injury sustained by the claimant is disputed. The avocation, income and age of the claimant are denied and thereby, he sought for dismissal of the Claim Petition.

6. Before the Claims Tribunal, the claimant examined himself as P.W.1 and the Doctor, who issued a Disability Certificate to P.W.1 was examined as P.W.2, further, 9 documents were marked as Ex.P.1 to Ex.P.9. On the side of the respondent, one Nandhakumar was examined as R.W.1 and the medical certificates in respect of the claimant was marked as Ex.R.1.

7. The respondents 1 and 2 remained exparte before the Claims Tribunal.

8. When the appeal is taken up consideration, I have heard the arguments of Mr.C.Kulanthaivel, learned counsel appearing for the appellant, Mrs.R.Srividhya, learned counsel

appearing for the third respondent and also perused the records carefully.

9. With respect to the findings arrived at by the Claims Tribunal, the learned Subordinate Judge has held that Ex.P.5 and Ex.R.1, which are the medical certificates issued to the claimant proves that at the time of accident the claimant was in a drunken mood and accordingly, he is also contributed his negligence to the level of 50%.

10. In this aspect, the claimant would contend that mere consumption of alcohol alone is not sufficient to hold that he is under the influence of alcohol. Further, he added without conducting blood test and urine test, the accuracy of alcohol found in the blood of the claimant cannot be calculated and thereby, the findings with respect to the said area is liable to be set aside.

11. In the said circumstances, it is useful to extract the judgment of BACHUBHAI HASSANALLI KARYANI v. STATE OF MAHARASHTRA reported in (1971) 3 SCC 930 wherein, it has held as follows:

"4.....The doctor had also admitted that a person could smell of alcohol without being under the influence of drinking. No urine test of the appellant was carried out and although the blood of the appellant was sent for chemical analysis, no report of the analysis was produced by the prosecution."

12. Now, on going through the Ex.P.5, which is the copy of the accident register issued by the Government Hospital, Erode, in which, it was mentioned that the claimant is having a breath smell of alcohol. Further, in Ex.R.1, it was mentioned that the claimant is having a smell of alcohol. In otherwise, in order to say whether any blood or urine test have been conducted to the claimant, none of them have been examined on the side of the respondents. So applying the principles laid down by our Honourable Apex Court, in this case on the side of the respondents, no relevant document was produced to establish that the claimant is under the influence of alcohol and hence, we cannot come to the conclusion that the claimant extended the liability upto the level of 50%. So, I am of the considered view that the claimant extended the negligence upto the level of 25%.

13. Now coming to the point of quantum of compensation, P.W.2, who is the Doctor issued a Disability Certificate has stated that due to the injury sustained in the accident P.W.1 is having 36% permanent disability. In otherwise, he did not say anything about the inability in doing the work

already the claimant was performed and the Claims Tribunal awarded Rs.30,000/- under the head of permanent disability. Since the accident had happened in the year of 2007, this Court decided to fix Rs.2,000/- per percentage of disability and calculated as follows:

$$\text{Rs.2,000/-} \times 36 = \text{Rs.72,000/-}$$

14. Secondly, under the head of Pain and Sufferings, the Tribunal awarded Rs.35,000/- which is highly excessive one, further P.W.2 specifically stated that the claimant is not in a position to perform the coolie work. In otherwise to find out the number of days, the claimant was in the Hospital, the discharge summary was not produced on the side of the claimant. So, it is relevant to award Rs.20,000/- under the head of Pain and Sufferings. Apart from that, the Claims Tribunal awarded Rs.15,000/- under the head of Future Expenses, Rs.5,000/- for Nutrition, Rs.1,000/- for Transportation, which are all unaltered. Accordingly, the modified compensation payable to the injured [claimant, Pandian] is as under:

Sl. No.	Head	Amount Awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of Permanent Disability	30,000.00	72,000.00
2	Pain and Sufferings	35,000.00	20,000.00
3	Extra-nourishment	5,000.00	5,000.00
4	Future Medical Expenses	15,000.00	15,000.00
5	Transportation	1,000.00	1,000.00
6	Medical expenses	270.00	270.00
	Total	86,270.00	1,13,270.00

15. In the result,

[i] The Civil Miscellaneous Appeal is allowed;

[ii] The award amount is enhanced to Rs.1,13,270/- from Rs.86,270/-. Since the claimant contributed his negligence to the level of 25%, the claimant in M.C.O.P.No.339 of 2007 is entitled to 75% of the award amount i.e. Rs.84,952/- [Rupees Eighty Four Thousand Nine Hundred and Fifty Two only] with 7.5% interest per annum from the date of petition till the date of realisation.

[iii] The third respondent [Insurance Company] is directed to deposit the award amount of Rs.84,952/- along with accrued interest and cost within 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, Pandian] 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

1. The Motor Accidents Claims Tribunal
[Additional District Judge cum
Fast Track Court No.IV],
Bhavani, Erode District.
 2. The Record Keeper, VR Section, High Court, Madras.
- +1cc to Mr.C.kualanthaivel, Advocate SR.No.83247

MR(CO)
GMY(19/02/2019)

C.M.A.No.3461 of 2012

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