

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.02.2018

Coram

The Honourable Mr.Justice S.BASKARAN

Civil Miscellaneous Appeal No.999 of 2015

The Divisional Manager,
The New India Assurance Company Ltd.,
No.30, J.N.Street, (II Floor),
Pondicherry - 605 001. ... Appellant/2nd Respondent

..vs..

1.Muthu @ Muthayal

2.S.Ramkumar ... Respondents/Petitioner & 1st
Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 14.03.2011 made in MCOP.No.1325 of 2004 on the file of the Motor Accident Claims Tribunal/II Additional District Judge, Puducherry.

For Appellant : Mrs.Elveera Ravindran

For Respondents : -

JUDGMENT

This civil miscellaneous appeal arises out of the Judgment and decree dated 14.03.2011 made in MCOP.No.1325 of 2004 on the file of the Motor Accident Claims Tribunal/II Additional District Judge, Puducherry.

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

3. The case of the petitioner is that on 12.09.2000 at about 4.30 p.m., the petitioner along with his brother was proceeding in the two wheeler bearing registration No.PY-01-L-8316, in Pondicherry - Villupuram Main Road, near Bankur, the first respondent mini lorry bearing Registration No.PY-01-B-5907, came at high speed in the opposite direction and dashed against the

two wheeler of the petitioner causing fracture on his right knee, left hip and angle. The petitioner took treatment in Government Hospital, Ariyur and after discharge, he was admitted in a private hospital at Chennai on the same day and discharged subsequently on 07.10.2003. The petitioner was readmitted on 21.11.2003 for bone grafting in his left leg and discharged on 17.12.2003. The accident occurred only due to the negligence of the first respondent mini lorry driver. The petitioner, who is working as Assistant in Government High School, Ariyur, is going to school daily in auto and using stick to walk around. Hence, the petitioner seeks compensation of Rs.3,00,000/- for the disability suffered by him and for medical expenses incurred. Hence, the petition.

4. Opposing the claim of the petitioner, by filing counter, the owner of the vehicle/first respondent disputed the claim of the petitioner that the negligence of his driver alone caused the accident. The first respondent driver was acquitted in the Criminal case filed against him. Thus, the first respondent contends that they are not liable for causing the accident and even assuming they are liable, the vehicle is insured with the second respondent and hence the compensation should be paid only by the second respondent and not by the first respondent. Hence, the first respondent seek dismissal of the petition.

5. On the other hand, opposing the claim petition, the second respondent Insurance Company has filed detailed counter stating that the accident does not occur due to the negligence on the part of the first respondent vehicle driver and it is only the negligence on the part of the petitioner, which has caused the accident. The petitioner has to prove the age, income and disability suffered by him. The fact of first respondent vehicle was insured with the second respondent and he complied with the policy condition is also to be proved by the petitioner. Thus, the second respondent seeks dismissal of the petition.

6. Before the Tribunal, the petitioner was examined himself as P.W.1 and the medical expert was examined as P.W.2 and produced Ex.P1 to Ex.P21 to prove his case. On the side of the respondents, neither oral nor documentary evidence was produced.

7. On the basis of available material on record, the Tribunal found that the first respondent driver alone caused the accident and awarded a sum of Rs.2,37,710/- as compensation to the petitioner. Aggrieved over the said findings of the Tribunal, the second respondent Insurance company has come forward this appeal.

8. Heard the counsel for the appellant and perused the materials available on record.

9. The learned counsel appearing for the second respondent/appellant contends that the finding of the Tribunal that the negligence of the first respondent driver caused the accident is not correct. The Tribunal has not appreciated the medical records properly in Ex.12 to Ex.P15, where in it is stated that the accident was caused only the ambassador car but the first respondent vehicle is mini lorry and that itself will prove that the first respondent vehicle did not caused the accident. The Tribunal erred in fixing the disability at 80% and the disability suffered by the petitioner is not a schedule injury. The amount awarded under the various heads is also highly excessive. Hence, the second respondent Insurance Company seeks to entertain the appeal and set aside the award passed by the Tribunal.

10. The second respondent/Insurance Company mainly aggrieved by the finding, negligence and the quantum of compensation awarded by the Tribunal has come forward with this appeal.

11. This Court considered the submission of the appellant and also perused the materials available on record.

12. The petitioner, who deposed as P.W.1 clearly stated that one Mini Lorry bearing Registration No.PY-01-B-5907 came in the opposite direction and dashed against his Hero Honda Motor cycle bearing Registration No.PY-01-L-8316. He also produced a copy of the first information report as Ex.P1. The averments in the first information report clearly contradicted the first respondent vehicle and the oral evidence of P.W.1 corroborates the contends of Ex.P1 first information report and the averments in the petition. Even though, in the grounds of appeal, it is contended that in the medical records, the vehicle involved in ambassador car. In the counter filed by the respondents no such averment is made. Further, the first respondent only stated that the criminal case filed against the driver of the first respondent mini lorry ended in acquittal and therefore they are not liable to pay compensation. It is apparent from the averments in the counter affidavit that the first respondent owned mini lorry was involved in the accident, the conclusion arrived at by the criminal Court is not binding on the Tribunal. The negligence has been assessed by the Tribunal independently on the basis of available materials and the evidence of P.W.1, which is not contradicted by any oral or material evidence on the side of the respondents. The Tribunal has correctly arrived at the conclusion that the negligence of the first respondent driver alone caused the accident. Therefore, on the basis of

available records, the Tribunal found that the first respondent owned mini lorry was driven in a rash and negligent manner and as a result, the accident occurred and claimant suffered injury.

13. This Court, on going through the oral and documentary evidence available on record, is of the view that the findings rendered by the Tribunal on the issue of liable/negligence is based on sound, reasonable reasoning and there is no need for interference with that.

14. Insofar as the quantum of compensation awarded by the Tribunal is concerned, no argument is advanced. Even otherwise going through the materials available on record, this Court is of the view that the quantum of compensation arrived at by the Tribunal is reasonable and the same cannot be stated to be on the higher side. Hence, this Court finds no merit in the appeal and no ground is made out to interfere with the conclusion arrived at by the Tribunal as the compensation awarded is just and fair.

15. In the result, the civil miscellaneous appeal is dismissed at the admission stage itself. The Fair and Decreeal order passed in M.C.O.P.No.1325 of 2004, dated 14.03.2011 on the file of the Motor Accident Claims Tribunal/II Additional District Judge, Puducherry, is confirmed. No costs. The second respondent insurance company is directed to pay the entire award amount with interest at 7.5% p.a., after deducting the amount that has already been deposited by them before the Tribunal within a period of two weeks from the date of receipt of a copy of this order. The petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
II Additional District Judge,
Puducherry.

2. The Section Officer,
VR Section, High Court,
Madras-104

+1cc to Mrs.Elveera Ravindran, Advocate, S.R.No.9100

C.M.A.No.999 of 2015

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cs/14/03/18



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