

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.505 of 2014

Royal Sundaram Alliance
Insurance Co.Ltd.,
Sundaram Towers,
45 and 46, Whites Road
Chennai-`4

...Appellant/2nd respondent.

vs

1.Ashokan @ Masilamani
2.S.P.Nagarajan
3.A.Rangasamy
4.Selve Gomti Neetan
5.Surendar Sharma

..Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 22.04.2013 passed in M.C.O.P.No.89 of 2013 on the file of Motor Accidents Claims Tribunal (Chief Judicial Magistrate) Coimbatore, dated 22.04.2013.

For appellant : : Mr.M.Krishnamoorthy
for Respondents : : Mr.C.Veeraraghavan for R1

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company, challenging the judgment and decree dated 22.04.2013 passed in M.C.O.P.No.89 of 2013 on the file of Motor Accidents Claims Tribunal (Chief Judicial Magistrate) Coimbatore.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the Petitioner is that on 02.03.2010, while the petitioner was proceeding as Pillion rider in the two wheeler bearing Reg.No.TN-38-3409 from Chennanur to Madhampatti, in the Siruvani Main road, near Thanneer Pandhal, the car bearing Reg.No.TN-38-S-5653 which was going in front of the two wheeler suddenly stopped without any signal resulting in the two wheeler dashing against the car and the Petitioner was thrown out and suffered grievous injuries. The accident occurred only due to the rash and negligent driving by the rider of the two wheeler in which the petitioner was going as pillion rider as well as the driver of the car, 3rd respondent. The Petitioner states that he was working as a Bakery worker in M/s.Vignesh Bakeries, Raja Street, Coimbatore, and was earning Rs.7,500/- per month before the accident. Due to the injuries suffered by him, the petitioner is unable to do any work and as such

seeks Rs.2,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, the 5th respondent/Insurance Company contends that the car bearing Reg.No.TN-38-S-5653 was insured with them but the claim of the Petitioner is not maintainable. The owner of the said car who is the 4th respondent is the father of the driver of the car who is the 3rd respondent. On the date of the accident, the 3rd respondent/daughter of the 4th respondent was not having valid licence. As such, it amounts to violation of Policy condition. Hence, the 5th respondent/Insurance company contends that they are not liable to pay any compensation. The manner in which the accident occurred as alleged by the Petitioner was denied. The age, avocation and income of the petitioner is disputed. The 5th respondent sought for dismissal of the Petition.

4. Before the Tribunal, except the 5th respondent all the other respondents remained exparte. The Petitioner examined himself as P.W.1 and the medical expert as P.W.2 and produced Ex.P.1 to Ex.P.15 documents to prove his claim. On the side of the respondents, neither

oral nor documentary evidence was let in. The Tribunal, on the basis of available evidence on record, found that the negligence of the 3rd respondent driver alone caused the accident and passed the award for a sum of Rs.1,17,500/-, directing the respondents 3 to 5 as the owner and insurer of the vehicle to pay the compensation amount to the Petitioners. Aggrieved over the said finding of the Tribunal, the 5th respondent/Insurance Company has come forward with the present appeal.

5. The learned counsel for the 5th respondent/Insurance Company/appellant herein contends that the Tribunal wrongly fixed the negligence on the part of the 3rd respondent and passed the award. The Tribunal ought to have held that the rider of the two wheeler in which the petitioner was riding as pillion rider also contributed to the accident. The Tribunal failed to consider Ex.P.1 properly. The petitioner himself has stated that the negligence on the part of both drivers as reason for causing the accident, but the same was not considered by the Tribunal properly. Hence, the 5th respondent/Insurance Company sought for entertaining the appeal and to set aside the award passed by the Tribunal.

6. On the other hand, the learned counsel for the Petitioner contended that the Tribunal properly appreciated the materials on record and found that the negligence on the part of the 3rd respondent alone caused the accident. As such, the conclusion of the Tribunal is just, fair and proper and the same needs no interference. Hence, the Petitioner/claimant seeks for dismissal of the appeal.

7. Heard both sides and perused the records carefully.

8. The Petitioner who deposed as P.W.1 stated that on 02.03.2010 as he was going as pillion rider in a two wheeler bearing Reg.No.TN-38-3409, the car bearing Reg.No.TN-38-S5653, which was going ahead of them, suddenly stopped without any signal and the two wheeler dashed against the rear side of the car, inspite of best efforts of the 1st respondent to stop the bike. The Police registered the case in Crime No.113 of 2010 as seen in Ex.P.1-FIR against the rider of the two wheeler in which the Petitioner was travelling as Pillion rider. It is an admitted fact that the charge sheet was not laid within the time limit and Ex.P.1-FIR was closed as evidenced by the order passed vide Ex.P.2 dated 17.11.2012.

9. The learned counsel for the Appellant/5th respondent contended that the laying of the FIR against the 1st respondent is sufficient to prove that the negligence of the 1st respondent alone caused the accident. However, the respondents have not examined either the 3rd respondent who was driving the car involved in the accident or any other witness to contradict and to disprove the claim of the Petitioner about the manner in which the accident occurred. It is true that the FIR was laid against the 1st respondent only, but ultimately the same has been closed for non-filing of charge sheet within the prescribed time limit. In such circumstances, the claim of the 5th respondent that the negligence of the 1st respondent alone caused the accident cannot be accepted. P.W.1 has clearly stated in his evidence that only due to stopping of the car belonging to the 4th respondent suddenly without any signal, the accident occurred. There is no contra evidence to P.W.1 version about the manner in which the accident occurred. In such circumstances, it is appropriate that the oral evidence of P.W.1 has to be accepted and the Tribunal is justified in holding that the negligence on the part of the 3rd respondent alone caused the accident. The offending vehicle viz., the car bearing Reg.No.TN-38-S-5653 was admittedly driven by the 3rd respondent

who is the daughter of the owner of the vehicle the 4th respondent herein and the said vehicle was insured with the 5th respondent/Insurance Company. As such, the respondents 3 to 5 are liable to pay compensation.

10. The petitioner states that he was aged 42 years at the time of the accident and was employed as a bakery worker in M/s.Vignesh Bakeries and was earning Rs.7500/- per month as salary. The petitioner states that he suffered nervous shock; fracture of nasal bone; fracture of hard palet; fracture of mandible left-III; fracture of right orbit; upper tooth broken; injury in the eyelid; multiple abrasions and lacerations all over the body in the accident. He produced medical records under Ex.P.7 to Ex.P.10. The doctor who examined the Petitioner assessed the disability suffered by him at 38% and issued disability certificate as Ex.P.14 and the X-ray as well as C.T.Scan taken by him as Exhibits P.9 P.10, and P.15. According to the doctor, the petitioner finds difficulty in doing day to day work and also suffers from frequent headache and giddiness. The Tribunal, after considering the medical evidence as well as the documents produced by the Petitioner fixed the partial permanent disability at 25%. There is no

cross objection or cross appeal filed by the Petitioner against the fixing of disability at 25% by the Tribunal. As such, the disability fixed by the Tribunal is found to be just and proper.

11. The Petitioner states that by working as Bakery worker, he was earning Rs.7500/- per month. However, there is no proof for the avocation and income of the Petitioner. Therefore, the Tribunal held that the Petitioner would have earned not less than Rs.5000/- per month and the said finding is just and proper. The Tribunal held that the petitioner suffered nervous shock; fracture of nasal bone; fracture of hard palet; fracture of mandible left-III; fracture of right orbit; upper tooth broken; injury in the eyelid; multiple abrasions and lacerations all over the body in the accident and by fixing the disability at 25%, granted Rs.2500/- per percentage of disability and as such, Rs.62,500/- is awarded by the Tribunal and the same needs no interference. The other amounts awarded by the Tribunal towards loss of income during the treatment period is Rs.15,000/-, Rs.5000/- towards transport expenses, Rs.5000/- towards extra nourishment and altogether Rs.1,17,500/- as compensation. The award of the Tribunal is found to be just and proper and needs no interference. Further the

Tribunal is justified in fixing the negligence on the 3rd respondent, driver of the car bearing Reg.No.TN-38-S-5653 and the same needs no interference.

12. In the result, the Civil Miscellaneous Appeal is dismissed. The award passed by the Chief Judicial Magistrate, Coimbatore, in M.C.O.P.No.89 of 2013 dated 22.04.2013 is confirmed. No costs. It is seen from the order of this court dated 04.03.2014 vide M.P.No.1 of 2014 in CMA.No.505/2014 that the Appellant/Insurance company deposited the entire award amount and subsequently, by order dated 09.01.2015 vide M.P.No.2 of 2014 in C.M.A.No.505 of 2014, the 1st respondent herein/injured Petitioner was permitted to withdraw 50% of the amount deposited by the Insurance company with accrued interest. Therefore, the 1st respondent/Petitioner is entitled to withdraw the award amount less the amount already withdrawn with proportionate and accrued interest by filing necessary application before the Tribunal.

05.04.2018

Index:Yes/No
Internet:Yes/No
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S.BASKARAN, J.

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To

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Coimbatore,

2.The Section Officer,
V.R.Section, High Court, Madras.



C.M.A.No.505 of 2014

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