

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.2572 of 2007

and

M.P.No.1 of 2007

M/s.New India Assurance Co.Ltd.,
Divisional Office,
Cowley Brown Road,
R.S.Puram, Coimbatore-2. ... Appellant/3rd Respondent
Vs.

1. S.Sujith ... 1st Respondent/Claimant
2. K.A.Subramanian
3. C.Shanmugam ... Respondents 2 & 3/Respondents 1 & 2
(Respondents 2 and 3 ex parte in
lower Court, hence Notice may be
dispensed with)

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree in M.C.O.P.No.474 of 2005 dated 11.08.2006 on the file of the Motor Accidents Claims Tribunal, 2nd Additional Sub-ordinate Court, Coimbatore.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.S.Gunalan for R1
R2 & R3 - Ex parte

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the Judgment and decree in MCOP.No.474 of 2005 dated 11.08.2006 by the appellant/New India Assurance company who is the third respondent in the claim application.

2. The brief facts of the case are that on 11.10.2003, the claimant, who is the first respondent herein, was riding his motorcycle/Hero Honda Passion along with his friend one Saravanan as a pillion rider and when they were proceeding near the first respondent's motor vehicle/Hero Honda Passion bearing

Regn.No.TN-37-Y-1245 which was ridden by its rider/ second respondent herein in a rash and negligent manner, came from in the opposite direction and hit against their vehicle, as a result of which, the first respondent had sustained injuries in his head and brain and immediately he was admitted in K.G.Hospital, Coimbatore, wherein he had taken treatment as in-patient from 11.10.2003 to 03.11.2003 and he was readmitted in the same hospital as inpatient from 10.11.2003 to 24.11.2003. The first respondent incurred huge medical expenses. The first respondent filed a claim petition before the Tribunal claiming a compensation of Rs.15,00,000/- from the Insurance company.

3. The Tribunal after assessing the documents viz, the FIR, Charge Sheet, Motor Vehicles Inspection report and also the Judgment in which the second respondent before the Magistrate Court admitted his guilt of the offence and paid the fine, found that the third respondent has not involvement in the accident and the accident had occurred only due to the rash and negligent riding of the second respondent. Hence, the Tribunal fixed the liability on the respondents 2, 3 and the appellant herein. While determining the compensation, the Tribunal verified the K.G.Hospital's history of the Treatment ie., Discharge Summary issued by Kerala Institute of Medi claim and the X-ray and also the medical bills and after perusing the Disability certificate, assessed the disability as 70%. Based on this, the Tribunal awarded for a sum of Rs.8,58,000/- on various grounds under the following heads, viz.,

Sl.N o	Heads	Amount
1	Transport	Rs. 30,000/-
2	Extra Nourishment	Rs. 5,000/-
3.	Hospital Expenses	Rs. 3,000/-
4.	Pain and Suffering	Rs. 50,000/-
5.	Permanent Disability	Rs. 70,000/-
6.	Loss of Earning Capacity	Rs.5,00,000/-
	Total	Rs.8,58,500/-

4. The main issue involved in this appeal is that whether the injured vehicle was involved in the accident and the amount of compensation is excessive?

5. On perusal of FIR, it is learnt that one Mr.K.R.Prakash who is studying second year M.B.A in the college of Engineering at Myneripalayam stated that he in his motor vehicle, the first respondent/injured and the pillion rider in their motor vehicle bearing Regn.No.KL-7-L-2532 and the same was driven by first respondent/claimant and the pillion rider who were travelling in front of him at the distance of 20 ft while they were proceeding with, one two wheeler came from west to east in a rash and negligent manner and hit against the vehicle which was ridden by first respondent/claimant proceeding before him at a distance of 20 feet and the vehicle also not stopped at the time and due to that accident, the first respondent/claimant and the pillion rider had fallen from the vehicle and sustained multiple injuries and immediately the injured were taken by auto to C.M.C Hospital wherein they were treated and they had taken further treatment at K.G.Hospital. In the FIR, no particulars about the type of vehicle and no registration numbers were given, only it has been stated as " ஒரு இரு சக்கர மோட்டார் சைக்கிள் மோதிவிட்டு நிற்காமல் சென்று விட்டது " and the date of accident was 11.10.2003 and the complaint was preferred on 18.10.2003.

6. The appellant / insurance company preferred this appeal aggrieved against the award of the Tribunal on the ground of the liability. The appellant/insurance company is the insurer of the third respondent vehicle and it is contended that the compensation awarded by the Tribunal is excessive. It is the argument advanced by the appellant/insurance company that the documents Ex.R.1 and Ex.R.2 clearly prove the fact that the insured vehicle is not involved in any accident. Further, Ex.P.2 Charge Sheet reveals the fact that the Sub-Inspector of Transport Investigation Wing has laid the Charge sheet on one K.A.Subramanian, S/o.Ayyasamy Gownder, Nandhavana Thottam, Kizhiagowndam Palayam, Alanthurai, Coimbatore under Sections 279 and 338 I.P.C (2 Counts). The Charge Sheet further reveals that on 11.10.2003 at about 22 hours, the said K.A.Subramanian/second respondent had driven the motor vehicle/Hero Honda Passion bearing Regn.No.TN-37-Y-1245 in a rash and negligent manner from west to east and dashed against the motorcycle bearing Regn.No.KL-7L-2532 which was ridden by first respondent/claimant and caused damage to the vehicle and also caused grievous injury to the said first respondent/claimant and also injury caused to the pillion rider in the said vehicle. The appellant/insurance company relies on Ex.R.1 which is the Accident Register wherein the entry is made to the following effect ;

" இவர்கள் 11.10.2003 இரவு 9.40 p.m க்கு Town Hall
அருகில் Bikey; செல்லும் போது எதிரே வந்த TVS/50
Mopedy; மோதி காயமானதாக Suresh, Sathya

கூறுகிறார்கள் " .

The said Suresh and Sathya have been mentioned as on lookers in Ex.R.1 Accident Register. However, it is argued by the appellant/insurance company that as per Ex.R.2 Case Sheet, the entries in the case sheet are that both Shyam/pillion rider and Sujith/claimant were brought to the hospital by one Sathya and they met with a road accident, while travelling in a bike. The bike hit against the moped. Further, the appellant/insurance company also relied on the evidence given by Doctor. In the Cross-examination in Ex.R.3.CMC Casualty Sheet, there is correction made in the signature of the Doctor. Further, the injured has been mentioned as Coolie. It is also the evidence of R.W.1 that he has not prepared the document Ex.R.3. Further, it is also observed that Ex.R.3 is a Form of Paediatric Medical-Surgical Case Sheet. Further, it is argued by the appellant/insurance company that in the signature of the Doctor, his designation and seal has not been affixed and Ex.R.3 smelling of alcohol has been mentioned. Hence, the appellant/insurance company relied on the evidence of Doctor relating to Exs.R1 to R.3 totally denied the involvement of third respondent's vehicle and further the persons who brought the injured to the hospital is also doubtful one. A perusal of Ex.P.6 shows that the Judgment of the Criminal Court wherein the accused K.A.Subramanian/second respondent has admitted the offence and paid the fine amount. The appellant doubts the involvement of the vehicle based on Ex.R.1 Accident Register and further the delay in preferring the F.I.R and suspects the involvement of the vehicle based on the entries made in the hospital document, the appellant/insurance company could have very well investigated the same through their agency and proved the same. Hence, in the absence of any investigation report, the arguments advanced by the appellant/insurance company based on the entries in the medical records and the omission of Doctor's signature and seal are not sufficient to accept the arguments of the appellant.

7. On the other hand, the Tribunal has analysed the evidence and the documents furnished on the side of the first respondent/claimant especially the F.I.R., Wound Certificate, Charge Sheet and the Judgment of Magistrate Court which are placed before it, and properly analysed and arrived at the finding with regard to the involvement of the vehicle and based on the same, the Tribunal fixed the liability on the appellant/insurance company . Hence, the argument of the appellant/insurance company in the absence of any clinching document to disprove the involvement of the vehicle has not been clearly proved.

8. Coming to the quantum of compensation, the documents filed on the side of the first respondent herein are Exs.P.13 to

P.43. Ex.P.7 Wound Certificate and Discharge Summary Ex.P.14 to P.18 proves that the injured sustained severe injuries and was given treatment for a long period and also the medical bills reveal the fact that the first respondent /claimant herein has incurred heavy medical expenses. Ex.P.44 Disability Certificate, wherein the disability has been mentioned as 70% and considering the nature of disability with regard to the disablement, the said disability certificate was issued on 01.03.2006. The disability certificate also shows that the disfigurement has occurred to the claimant. While considering the claimant as a Engineering Graduate who has sustained severe injuries and the huge amount has been spent for treatment, the Tribunal has properly assessed the award amounts in all heads, which requires no interference.

9. In the result, this Civil Miscellaneous Appeal stands dismissed and the award of the Tribunal in M.C.O.P.No.474 of 2005 dated 11.08.2006 is hereby confirmed. The appellant/insurance company is directed to deposit the amount awarded by the Tribunal, less the amount, if any already deposited within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the same together with accrued interest. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

Vv

To

1. The 2nd Additional Sub-ordinate Judge,
The Motor Accidents Claims Tribunal,
Coimbatore.

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

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.65159

+1cc to Mr.S.Gunalan, Advocate SR.No.65064

C.M.A.No.2572 of 2007
and M.P.No.1 of 2007

SV (CO)
GMY (27/11/2018)