

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26.06.2018

CORAM

THE HONOURABLE MR.JUSTICE S.BASKARAN

CIVIL MISCELLANEOUS APPEAL NO.3656 OF 2008

AND

M.P.NO.1 OF 2008 AND M.P.NO.1 OF 2010

The National Insurance Co.Ltd.,
Attur,
Salem District.Appellant/3rd respondent

...vs...

1.Gopal @ Gopalakrishnan1st Respondent/Petitioner

2.Rajendran

3.Balakumar

... Respondents 2 & 3/
Respondents 1 & 2

Prayer:-

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 28.04.2008 made in MCOP.No.53 of 2006 on the file of the Motor Accident Claims Tribunal/(Chief Judicial Magistrate Court), Erode.

For Appellant : Mr.J.Chandran

For Respondents : Mr.N.Manoharan for R-1

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 28.04.2008 made in MCOP.No.53 of 2006 on the file of the Motor Accident Claims Tribunal/(Chief Judicial Magistrate Court), Erode, the third respondent/Insurance Company has come forward with the present appeal to set aside the award passed by the Tribunal.

2.For the 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 25.06.2004 at about 9.30 a.m., when the petitioner was riding his two wheeler bearing Registration No.TN-33-A-9328, in Sathy to Chithode Main Road, near Sellam Mahal, the first respondent driven lorry bearing Registration No.TN-28-C-9598 came in the opposite direction, at high speed, in a rash and negligent manner, dashed against the two wheeler, in which the petitioner was riding. Due to the impact, the petitioner was thrown away from the two wheeler and suffered grievous injuries all over the body. The accident occurred due to the negligence of the second respondent vehicle driver only. The petitioner took treatment in the private hospital Erode and then in K.G. Hospital, Coimbatore. Due to the fracture and multiple injuries suffered, the petitioner is unable to attend to his normal avocation. Prior to the accident, the petitioner by working as a Manager and Supervisor in a private Transport Corporation and also by doing agricultural work was earning Rs.9,000/- per month. Due to the injuries suffered, he is not able to carry on his work resulting in loss of income to him. Thus, the petitioner seeks a sum of Rs.5,00,000/- as compensation from the respondents.

4.On the other hand, opposing the claim petition, the third respondent-Insurance Company by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The nature of injuries, duration of treatment and disability suffered by the petitioner as alleged in the petition are not correct. The claim of the petitioner about the age, avocation and income of the injured are not admitted. The amount claimed by the petitioner is highly excessive. The petitioner has to prove that the first respondent possessed valid driving licence and the vehicle was having valid policy coverage. Thus, the third respondent Insurance Company sought for dismissal of the petition.

5.Before the Tribunal, the petitioner examined P.W.1 to P.W.3, produced documents Ex.P1 to Ex.P28 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6.The Tribunal, on the basis of materials available on record, found the negligence of the second respondent's lorry rider alone caused the accident, passed an award for a sum of Rs.4,31,640/- as compensation to the petitioner. Aggrieved over the said findings of the Tribunal, the third respondent-Insurance Company has come forward with this present appeal.

7.Heard the learned counsel appearing for the appellant/3rd respondent Insurance Company and the learned counsel appearing for the first respondent/claimant and perused the materials available on record.

8.The learned counsel appearing for the appellant/3rd respondent Insurance Company contends that the Tribunal ought to have held that the accident occurred only due to the negligence of the petitioner and reduced the compensation. The Tribunal erred in believing the evidence of P.W.3 Doctor and the disability certificate issued by him assessing the disability at 20%. Likewise, the Tribunal ought to have disbelieved the evidence of P.W.2 Doctor, who assessed the disability at 25% and issued Ex.P25 disability certificate. The Tribunal erred in fixing the total disability at 29% and wrongly adopted multiplier 17. The quantum of award passed by the Tribunal is highly excessive. Thus, the 3rd respondent Insurance company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

9.Per contra, the learned counsel appearing for the first respondent/claimant contends that the Tribunal after analysing the evidence correctly concluded that the negligence of the second respondent lorry driver alone caused the accident, passed a fair and reasonable award which needs no interference. Thus, the first respondent/claimant/petitioner sought for dismissal of the appeal.

10.The petitioner who deposed as P.W.1 clearly stated that on 25.06.2004 at about 9.30 p.m., while he was riding his two wheeler on the left side of the Sathi to Chithode Main Road, near Sellam Mahal, the second respondent lorry came at high speed and dashed against him. The police also registered Ex.P1 First Information Report against the first respondent driver only. The contents of Ex.P1 First Information Report clearly corroborates the oral version of the accident given by P.W.1. Further, the rough sketch of the occurrence spot and observation mahazar are produced as Ex.P2 and Ex.P5. The police after completion of investigation laid charge sheet Ex.P6 against the first respondent driver only. The driver of the lorry admitted his guilt and paid the fine amount before the Criminal Court as evidenced by Ex.P7 copy of the judgment. Thus, it is clear from the above said documents and P.W.1 evidence that negligence of the first respondent/driver alone caused the accident.

11.On the other hand, the respondent has not examined the driver of the lorry or any other person to contradict the version given by P.W.1 as to how the accident occurred. In such circumstances, the Tribunal is justified in concluding the negligence of the first respondent driver alone caused the accident as per the documents produced by the petitioner. The respondents being driver, owner and insurer of the lorry bearing Registration No.TN-28-C-9598 they are liable to pay compensation.

12.The petitioner who deposed as P.W.1 clearly stated that he suffered multiple grievous injuries all over the body. The petitioner also produced the wound certificate as Ex.P3 to show the nature of injuries suffered by him. According to the petitioner, there is a bone fracture in right upper arm, fracture of C-5 and C-7 bones in the back side, his head was broken on the right side for 15cm., for which, he took treatment in K.G. Hospital, Coimbatore. He under went surgery to correct the fractured bone in his right arm and also to rectify the broken head. The petitioner also stated that as he suffered fracture in the spinal cord, he is not able to turn his neck. Due to the injuries suffered, he is often feeling giddiness. The wound certificate is marked as Ex.P3 and the discharge summary issued by K.G. Hospital as Ex.P8. The medical records of the petitioner including the CT Scan, X-ray produced as Ex.P9 to Ex.P11 and Ex.P14 to Ex.P23. It is clear from the same, the petitioner suffered multiple fractures and grievous injuries causing him partial permanent disability.

13.To prove that the petitioner suffered disability, the medical experts are examined as P.W.2 and P.W.3. According to P.W.2, the petitioner has suffered fracture in his head and also in C-5 and C-7 bones on the back. Further, the humerus bone in the right side upper arm was broken, due to which the petitioner will find it difficult to turn his neck. The shoulder of the petitioner is affected. Thus, P.W.2 assessed the disability suffered by the petitioner at 25% and issued Ex.P27 disability certificate.

14.Similarly, P.W.3 Doctor also assessed the disability and given disability certificate. The petitioner produced CT. Scan report, X-ray as well as the disability certificates as Ex-P9 to Ex.P11 and Ex.P.14 to Ex.P28. As there is no contra evidence on the side of the respondents and nothing is elicited during the cross examination of P.Ws.2 and 3 to disbelieve their evidence, the Tribunal is justified in assessing the disability at 29%. Likewise, the Tribunal fixed the monthly income of the petitioner at Rs.4,000/-. The Tribunal considering the age of the petitioner was 35, adopted the multiplier 17 to assess the loss of income of the petitioner. Thus, for 29% disability, the Tribunal fixing the monthly income of the petitioner as Rs.4000/-, adopted multiplier 17, provided a sum of Rs.2,36,640/- as compensation for the disability. After analysing the evidence, the Tribunal has provided Rs.1,45,000/- towards medical bills, Rs.30,000/- towards pain and sufferings, Rs.15,000/- towards extra-nourishment, Rs.5,000/- towards transport charges and totally awarded a sum of Rs.4,31,640/- as compensation. In view of the above discussion, the appellant/Insurance Company has not come forward with valuable grounds to find fault with the award passed by the Tribunal.

Thus, the same does not require any interference. The reasoning of the Tribunal for fixing the percentage of negligence and the quantum of award passed on the basis of it, is well considered and appropriate based on the proper appreciation of evidence on record. Hence, the appeal deserves to be dismissed.

15. In the result, the civil miscellaneous appeal is dismissed. No costs. The Order and Decreetal order dated 28.04.2008 made in MCOP.No.53 of 2006 on the file of the Motor Accident Claims Tribunal/(Chief Judicial Magistrate Court), Erode, are hereby confirmed. Consequently, connected M.Ps. are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Maigstrate,
Motor Accident Claims Tribunal,
Erode.
2. The Section Officer,
V.R. Section, High Court,
Madras 104. (2 Copies)
3. The National Insurance Company,
Attur, Salem District.

+1cc to Mr.N.Manoharan, Advocate, S.R.No.40608

C.M.A.No.3656 of 2008

BR(CO)

CS/20/02/2019

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