

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.428 of 2006

United India Insurance Co.Ltd.,
Oriental Complex, 77-AA Street
Salem-1

...Appellant/2nd respondent

vs

1.M.Ravi

...1st Respondent/Petitioner

2.V.Lakshmi

...2nd Respondent/1st respondent.

Civil Miscellaneous Appeal filed against the judgment and decree dated 24.02.2005 made in M.C.O.P.No.620 of 2003 on the file of Motor Accident Claims Tribunal, Principal Sub-Court, Salem.

For appellant : : Mr.K.Suryanarayanan
for Respondents : : Mr.P.Jagadeesan 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 24.02.2005 made in M.C.O.P.No.620 of 2003 on the file of Motor Accident Claims Tribunal, Principal Sub-Court, Salem.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioner-Ravi, is that on 23.04.2003, while he was proceeding as pillion rider in the two wheeler from Omalur towards Salem at about 2.30 a.m., near Vellakkalpatti Punjabi Dhaba hotel, a tempo bearing Reg.No.TN-27-E-9259 came from behind at high speed, dashed against the two wheeler, causing him multiple fracture and injuries all over the body. The four fingers in his front foot was crushed and he was admitted in Salem Government Hospital wherein, half of his foot was amputated. The accident occurred only due to rash and negligent

driving by the tempo driver. The petitioner was aged 29 years and was earning Rs.6000/- per month. Due to the accident, the petitioner is unable to attend to his avocation. Hence, the petitioner sought for Rs.7,50,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the petition, the 2nd respondent/insurance company contends that the accident did not occur in the manner alleged by the petitioner. The tempo van driver is not responsible for the accident. The claim about the age, avocation and income of the petitioner is denied. Thus, the 2nd respondent sought for dismissal of the petition.

4. Before the Tribunal, the petitioner examined himself as P.W.1 and doctor as P.W.2 and produced documents Ex.P.1 to Ex.P.9 to prove his claim. While the 1st respondent remained exparte, on the side of the 2nd respondent, R.W.1 was examined but no document was produced. The Tribunal on the basis of available evidence found that the negligence on the part of the 1st respondent driver alone caused the accident and awarded a sum of Rs.1,93,600/- as compensation to the petitioner. Being aggrieved over the same, the 2nd respondent insurance company has come forward with the present appeal.

5. The learned counsel for the appellant/2nd respondent contended that three persons travelled in a two wheeler and the petitioner was one of the pillion riders and the accident occurred only due to the negligence of the the two wheeler driver. The evidence of R.W.1 who was the driver of the tempo was not considered properly by the Tribunal and hence, fixing total liability on the 1st respondent vehicle driver is not proper. The amount awarded by the Tribunal under different heads is exorbitant and sought for allowing the appeal.

6. The learned counsel for the petitioner/injured contended that the appeal lacks merit and the same deserves to be dismissed. According to the petitioner/claimant, the Tribunal on the basis of available evidence, has arrived at just and fair conclusion. Hence, the same needs no interference and thus sought for dismissal of the appeal.

7. Heard both sides and perused the records carefully.

8. The petitioner who deposed as P.W.1 has stated that while he was travelling as pillion rider in two wheeler, 1st respondent tempo came at high speed dashed against the two wheeler resulting in the accident. The petitioner has clearly spoken about the manner in which the accident occurred. There is no contra evidence on the side of the 2nd respondent to disprove the claim of the petitioner. The petitioner also produced copy of

the FIR as Ex.P.1. It is evident from the same that the accident occurred only due to the negligence of the tempo van driver. The driver of the tempo who deposed as R.W.1 stated that including petitioner, three persons travelled in the tempo and negligence of the two wheeler rider alone caused the accident. However, the injured petitioner was only a pillion rider. As such, no negligence can be attributed to the petitioner, for driving the said two wheeler carelessly. Further, even assuming that three persons travelled in the two wheeler, mere violation of Rules will not lead to fixing contributory negligence on the part of the petitioner who was only a pillion rider. In such circumstances, the finding of the tribunal that the 1st respondent vehicle driver alone caused the accident due to his negligence is just and proper. In such circumstances, the claim of the 2nd respondent to set aside the award on that ground is not sustainable.

9. The quantum awarded by the Tribunal is not seriously disputed by the appellant/2nd respondent. In such circumstances, from the above said observation, it is clear that the accident occurred only due to the negligence of the 1st respondent vehicle driver and therefore, the respondents 1 and 2 are jointly and severally liable to pay compensation to the injured. Hence the finding of the Tribunal appears to be just and proper, in all aspects. Thus, the contention of the appellant/ 2nd respondent-Insurance company seeking to entertain the appeal and to set aside the award passed by the Tribunal has to fail. The point is answered accordingly.

10. In the result, the Civil Miscellaneous Appeal is dismissed. The award dated 24.02.2005 made in M.C.O.P.No.620 of 2003 on the file of Motor Accident Claims Tribunal, Principal Sub-Court, Salem, is confirmed. The Wherein earlier orders passed by this Court in CMP.No.1438/2006 and 8868/2006 on 15.02.2006 and 03.08.2006 respectively shows that the appellant/second respondent-Insurance company was directed to deposit the entire award amount and the 1st respondent/Petitioner was permitted to withdraw 50% of the award amount. Further, the balance amount was directed to be invested in any Nationalised Bank. Therefore, the Tribunal shall pass appropriate orders on application filed by the Petitioner/1st respondent in CMA for disbursal of the balance award amount. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Principal Sub ordinate Judge,
Motor Accident Claims Tribunal, Salem.

Copy to
The Section Officer,
VR.Section ,
High Court,Chennai.

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.20280

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.20350

C.M.A.No.428 of 2006

NMI (CO)
GSP (31/07/2018)



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