



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2018

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI

CMA(MD) No.389 of 2011

WEB COPY

Gnanadoss

.. Appellant/Petitioner

-Vs-

1.P.Martin Sahayaraj

2.M/s.National Insurance Co. Ltd.,

2/7, Pudukkottai Road,

Trichy - 20.

...Respondents 1 & 2/

Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal - filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 18.11.2010 and made in M.C.O.P.No.1359 of 2006 on the file of the Motor Accident Claims Tribunal (III Additional Sub Court), Trichy.

For Appellant

: Mr.A.Saravanan

For R2

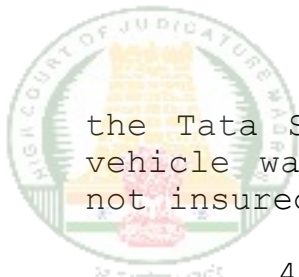
: Mr.D.Sivaraman

JUDGMENT

The appellant is the petitioner in M.C.O.P.No.1359 of 2006 on the file of the Motor Accidents Claims Tribunal, III Additional Sub Court, Trichy and he claimed a sum of Rs. 5 lakhs as compensation for the injuries sustained by him due to the accident that took place on 18.12.2005, at 0.30 hours.

2. According to the appellant, the driver of the Tata Sumo, in which, the appellant and others were travelling, drove in a rash and negligent manner and dashed against the tree and caused the accident. According to the appellant, he suffered grievous injuries as well as simple injuries all over the body and he was admitted in the hospital on 18.12.2005 and discharged on 19.12.2005. He was taking treatment as an out-patient for three months, once in a week. Before the accident, he was working as a Driver in Vasuda Industries in Thuvakudi and earning Rs.5000/- per month. After the accident, he could not do any work as he has done before the accident.

3. The first respondent remained ex-parte before the Tribunal. The second respondent filed a counter statement and contended that the appellant and the first respondent are colluding together and lodged a complaint on 10.01.2006 with a delay of 23 days from the accident, to claim compensation. The second respondent denied all the averments in the claim petition and contended that



the Tata Sumo is not involved in the accident. The driver of the vehicle was not possessing valid driving license. The vehicle was not insured with the second respondent Insurance Company.

4. The appellant and two others filed Claim Petitions claiming compensation. Three claim petitions were taken up together. The appellant and other two claimants were examined as P.W.1 to P.W.3 and two doctors were examined as P.W.4 and P.W.5. The appellant and other two claimants have filed 24 documents, which were marked as Ex.A1 to A.24. The second respondent examined 3 witnesses as R.W. 1 to R.W.3. He did not mark any documents. The court document was marked as Ex.X.1.

5. The Tribunal, considering the pleadings, oral and documentary evidence, came to the conclusion that only due to the rash and negligent driving of the driver of the Tata Sumo Car, the accident took place and considering the nature of the injury sustained by the appellant, the Tribunal awarded Rs.90,000/- as compensation. The Tribunal, considering the fact that the appellant and others travelled in a private vehicle of the appellant on charges, held that the second respondent is not liable to pay compensation, since private vehicle on payment of charges was used for commercial purpose.

6. Challenging that, the claimant has come out with the present appeal.

7. The learned counsel for the appellant contended that the Tribunal erred in reducing the percentage of disability from 42 % to 30% without any proof. The appellant proved the percentage of the disability by examining the doctor, who categorically certified that the appellant suffered 40% of disability. The Tribunal erred in granting compensation and directed the first respondent alone to pay the compensation. The Tribunal, having held that the accident took place due to the rash and negligent driving of the driver of the Tata Sumo, ought to have directed the second respondent to pay the compensation.

8. The Civil Miscellaneous Appeal has been dismissed by this Court against the first respondent by order dated 29.11.2017.

9. The learned counsel for the second respondent contended that the Tribunal has considered the fact that the first respondent-owner of the Tata Sumo has violated the terms of policy, as vehicle insured for private use, was used for commercial purpose. In view of the violation of policy condition, the Tribunal has rightly rejected the Claim Petition against the second respondent.

10. The learned counsel for the second respondent further contended that the accident itself was not proved by the appellant and the complaint was given only after 23 days from the accident and in the First Information Report itself, the vehicle number was not



mentioned and he prayed for dismissal of the Civil Miscellaneous Appeal.

11. From the materials on record, it is seen that the appellant and others travelled in a Tata Sumo, which was insured with the second respondent for private use, whereas, the second respondent has used the same for commercial purpose. It is not only violation of policy condition but also against the conditions of registration as the owner of the vehicle having registered the vehicle for private use, cannot use the same for public transport or for commercial purpose. In view of the same, the award of the Tribunal dismissing the Claim Petition against the second respondent is valid.

12. As far as the compensation is concerned, the Doctor has certified that the percentage of disability is at 40% and at the same time, the Doctor has deposed that if proper physiotherapy treatment is taken, percentage of the disability could be reduced. Considering the evidence of the Doctor, the Tribunal has reduced the percentage of disability from 42% to 30%. There is no error in the order of the Tribunal. Further, the appeal is dismissed against the first respondent owner of the vehicle and the appellant has not taken steps to restore the appeal against the first respondent. The tribunal has considered all the materials on record and awarded a sum of Rs.90,000/- as compensation .

13. For the above stated facts and circumstances, there is no reason for enhancing the award amount. Hence, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The III Additional Sub Judge,
The Motor Accident Claims Tribunal, Trichy.

2.The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai. **(2 copies)**

+1CC to Mr.D.Sivaraman, Advocate, SR.No.77959

CMA(MD) No.389 of 2011
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