IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2152 of 2007
and
M.P.No.1 of 2007

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
46, Whites Road,
Chennai - 600 014. ... Appellant/4th Respondent

Vs.

1. R.Rajendran ... 1st Respondent/Petitioner

2. P.Paraman
3. P.Rajendran

4. M/s.United India Insurance Co. Ltd.,
 Branch Office, Shreeji Chamber,
 Mount Road, Post Box No.52,
 Coonoor - 643 101.
 ... Respondents 2 to 4/Respondents 1 to 3

(Respondents 2 & 3 exparte before Lower Court and hence notice may be dispensed with)

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree in M.C.O.P.No.28 of 2005 dated 07.03.2007 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Erode.

For Appellant : Mr.N.Vijayaraghavan

For R1 : Mr.S.Kaithamalai Kumaran
R2 & R3 - Exparte
R4 - Not Ready in Notice

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 07.03.2007 made in M.C.O.P.No.28 of 2005 on the file of the Principal Sub Judge (Motor Accidents Claims Tribunal), Erode.

2. The case of the appellant is that on 03.06.2004 at about 9.30 a.m., the third respondent's Van bearing Reg.No.TAT 5064 was parked on the Udumalai to Palladam Road in front of E.B.Office, Kethanoor, and at that time, the driver of the

said Van who is the second respondent herein without giving any signal rashly and negligently moved the Van in reverse direction towards the said main road and dashed against the Motorcycle driven by the first respondent who at that time was just crossing the rear portion of the Van. As a result of which, the first respondent had sustained multiple fractures and injuries all over his body and immediately he was admitted in C.M.C. Hospital for treatment. There, he had been continuously undergoing treatment as an inpatient up to 18.08.2004 and thereafter, he was taking treatment as outpatient in a Private Hospital at Erode and Coimbatore. In spite of the treatment, he became permanently disabled. Hence he filed a petition before the Principal Sub Judge (Motor Accidents Claims Tribunal), Erode, claiming Rs.10,00,000/- as compensation against the owner and insurers of the vehicles involved in the accident.

3. Denying the allegations, the appellant insurance company filed a counter affidavit stating that the accident occurred only due to the negligent driving of the third respondent's Van driver and therefore they are not liable to pay any compensation to the claimant. Further, the alleged nature of injuries, period of treatment and disability are not true and the amount of compensation claimed is also very high.

4. The fourth respondent insurance company also filed a counter affidavit stating that it was the first respondent who drove the Motorcycle in a rash and negligent manner and dashed against the third respondent's Van parked on the left side of the road and there was no fault on the part of the second respondent driver. Further, it has been stated that the first and second respondents had no valid driving licence at the time of accident and therefore they are not entitled to any compensation from them. Moreover, it has been stated that the alleged disability, age, occupation and income of the first respondent are not true and the amount of compensation claimed is also very high.

5. The Principal Sub Judge (Motor Accidents Claims Tribunal), Erode, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded Rs.3,66,700/- as compensation under various heads, which are as follows :

S.No.	Description	Amount
1.	Permanent Disability and Loss of Income (4000 X 12 X 16 X 40/100)	3,07,200
2.	Pain & Sufferings	30,000
3.	Medical Expenses	7,500
4.	Future Medical Expenses	10,000

S.No.	Description	Amount
5.	Nutrition	10,000
6.	Transport	2,000
	Total	3,66,700/-

6. Aggrieved by the said award, the appellant has filed this appeal before this Court stating that the Tribunal has erred in awarding Rs.1,00,000/- as against the appellant.

7. The learned counsel for the appellant would submit that the insurance policy of the first respondent does not cover the risk of the owner of the vehicle and therefore the first respondent being the owner of the Motorcycle is not entitled to any compensation from the appellant. In support of his contention, the learned counsel has relied upon the Judgments of the Hon'ble Supreme Court of India reported in 2005 ACJ 1 [Dhanraj V. New India Assurance Co. Ltd and Another] and 2007 ACJ 821 [New India Assurance Co. Ltd. V. Meera Bai and Others].

8. Heard the learned counsel for the appellant and the learned counsel for the first respondent, and perused the materials available on record.

9. On perusal of the award dated 07.03.2007 passed by the Motor Accidents Claims Tribunal, Principal Sub Court, Erode in M.C.O.P.No.28 of 2005, it is observed that the first respondent in order to prove that the second respondent driver is the cause for the alleged accident marked Exs.P1 and P4 i.e. the FIR Copy and Model Diagram, and on perusal of the same, the Tribunal has found that the accident had occurred due to the negligence of both the first and second respondents, and therefore, the Tribunal has come to the conclusion that both are equally liable for the alleged accident. Further, it is observed that one doctor Thiru.Palanivel examined as PW3 on the side of the first respondent and deposed that when he examined the medical report of the first respondent which was given in the Coimbatore Government Hospital, he found that one part of the thigh bone had been spoiled to the first respondent and his left knee patella bone had also been broken and due to which, he troubled to sit, stand and walk for long time and thus, he sustained 40% disability. In order to prove the same, the doctor has also marked his disability certificate as Ex.P16 and only based on which, the Tribunal has come to the conclusion that the first respondent has sustained 40% disability due to the injuries sustained in the accident. Moreover, it is observed that the first respondent has not marked any document to prove his income, and therefore, the Tribunal has fixed his income as Rs.4,000/- as minimum wage.

10. It is also observed from the award of the Court below

that the first respondent has marked Exs.P2, P10 and P11 i.e. the Injury Certificate, Scan Report and Assessment of treatment to be undergone by the first respondent, in order to prove his age, and on perusal of the same, the Tribunal has found that the age of the first respondent at the time of accident would be 35 to 40, and therefore, the Tribunal has taken the 16 multiplier and awarded Rs.3,07,200/- (4000 X 12 X 16 X 40/100) towards Permanent Disability and Loss of Income. Further, it is observed that the first respondent has marked the medical bills as Ex.P9 to prove the expenses made for the treatment and only after considering the same, the Tribunal has awarded Rs.7,500/- towards Medical Expenses. The Tribunal has also considered the nature of injuries sustained by the first respondent and therefore, has further awarded Rs.10,000/- for Future Medical Expenses. During the period of treatment, the appellant definitely would have suffered from severe pain and would have incurred expenses for Transport and Nutrition, and therefore, the Tribunal has awarded Rs.30,000/- for Pain & Sufferings, Rs.2,000/- for Transport and Rs.10,000/- for Nutrition.

11. It is further observed from the award of the Court below that since it was concluded that the first respondent/claimant is equally liable for the alleged accident, the Tribunal has held that the first respondent/claimant is entitled to receive only Rs.1,83,350/- from the total compensation of Rs.3,66,700/- and further, the third respondent's Van was insured under the fourth respondent insurance company at the time of accident, and therefore, the Tribunal has held that the amount of Rs.1,83,350/- awarded to the first respondent shall be paid by the respondents 2 to 4 jointly or severally. Moreover, it is observed that the Tribunal has held that the appellant as insurer of the first respondent is liable to pay Rs.1,00,000/- to him. The first respondent's Motorcycle was insured under the appellant insurance company at the time of accident and the copy of the insurance policy is produced before this Court, wherein, it is specifically stated that the policy covers to any person including insured. The Tribunal has rightly held that the appellant is liable to pay Rs.1,00,000/- to the first respondent and the contention of the appellant that the policy does not cover the risk of the owner of the vehicle cannot be accepted.

12. In view of the observations made by this Court, this Court does not find any error in the award passed by the Tribunal and hence is not inclined to interfere with the same.

13. Accordingly, this Civil Miscellaneous Appeal is dismissed and the respondents 2 to 4 are directed to deposit the said amount of Rs.1,83,350/- jointly or severally with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date

of receipt of a copy of this Judgment. The appellant insurance company is also directed to deposit Rs.1,00,000/- as stated by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. After depositing the entire award amount, the first respondent/claimant can withdraw the same by filing a formal petition before the concerned Court. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sub Judge
   (Motor Accidents Claims Tribunal),
   Erode.

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

+1cc to Mr.T.Ravichandran, Advocate, S.R.No. 100356
+1cc to Mr.M.B.Gopalan, Advocate, S.R.No. 100804
+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No. 100180

C.M.A.No.2152 of 2007
and
M.P.No.1 of 2007

BR(CO)
GN(04/09/2020)