

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2189 of 2008

and

M.P.No.1 of 2008

1. M.Venkatesh Kumar

2. National Insurance Company Ltd.,
Dharmapuri Branch,
Dharmapuri Town. Appellants/
3rd Respondent & 4th Respondent

Vs.

1. T.Manikandan1st Respondent/Petitioner

2. A.Karthikeyan
(R2 set exparte before the Tribunal)

3. The Oriental Insurance Company ltd.,
Hosur Branch, Bypass road,
Hosur Town.2nd and 3rd Respondent/
1st and 2nd Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.1.2007 made in O.P.No.1439 of 2003 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Krishnagiri.

For Appellants : Mr. D.Bhaskaran
For R1 : Mr.P.Mani
For R3 : Mr.J.Chandran

J U D G M E N T

This appeal arises out of the award and decree dated 19.1.2007 passed by the Motor Accidents Claims Tribunal (Sub Court) Krishnagiri in MCOP.No.1439/2003.

2. The case in brief is as follows:

On the fateful day, i.e., on 04.05.2002, at about 09.15am, the first respondent/claimant along with his brother and a woman boarded the Auto Rickshaw bearing Registration No.TMK 9952

belonging to the second respondent and insured with the third respondent at Mathur. When the vehicle was proceeding in Mathur-Bargur Highways Road, near Karadigollapatti junction road, the driver of the said auto rickshaw drove it in a rash and negligent manner and dashed against a new Auto Rickshaw belonging to the first appellant and insured with the second appellant, coming from the opposite direction. Due to the said impact, the first respondent/claimant sustained grievous injuries. Stating that the accident had occurred due to the rash and negligent driving on the part of the driver of the auto rickshaw, in which, the first respondent was travelling, he filed a claim petition claiming a sum of Rs.2,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal after having held that the accident had occurred due to the rash and negligent act on the part of the drivers of both the vehicles and accordingly fastened liability on the insurers of both the vehicles at 50% each and ultimately quantified the total compensation of Rs.1,10,000/- with interest at the rate of 7.5% per annum from the date of petition. Aggrieved over the same, the owner and the insurer of the new Auto rickshaw, have come out with the present appeal.

3.The learned counsel for the appellants submitted that the second appellant insurance company was exonerated from its liability in the award passed by the claims Tribunal in OP.No.42/2003 arising out of the same accident. Without considering the same in a proper perspective, the Tribunal has erred in fastening 50% liability on the second appellant insurance company. He also submitted that compensation awarded by the Tribunal is excessive and exorbitant.

4.The learned counsel for the respondents 1 and 3 submitted that after analysing the oral and documentary evidence adduced by the parties, the Tribunal has rightly fastened the liability on the insurers of both the vehicles at 50% each and awarded the just compensation and hence, the same do not require any interference in the hands of this Court.

5.Heard the learned Counsel on either side and perused the materials available on record carefully and meticulously.

6.According to the appellants, without considering the materials and evidence available on record, the Tribunal has erred in fastening 50% liability on the second appellant insurance company to pay compensation to the first respondent/claimant. To appreciate the said contention, this Court is inclined to go into the pleadings and evidence produced by the parties.

7. On a careful perusal of the Claim petition filed by the first respondent/claimant, it could be seen that at paragraph No.23, he has specifically stated that the accident had occurred due to the rash and negligent driving of the driver of the auto rickshaw, in which, he was travelling. Further, the second appellant insurance company, at paragraph no.6 of its counter statement to the claim petition, has averred as follows:-

"The narration of the accident as stated at column 23 is correct. Further a case has been registered against 1st respondent driver by Mathoor Police in Crime No.229/2002 under Section 279, 337IPC as for his rash and negligent driving. Hence for the negligent act of the 1st respondent driver who was also convicted. So this respondent or third respondent is not liable to pay any compensation and this petition is liable to be dismissed as the third respondent driver has driven the Auto slowly and carefully observing the rules of road."

Ex.P1 First Information Report was also produced to substantiate the same. That apart, there was no contra evidence adduced by the third respondent insurance company, with regard to the manner of accident as narrated by the first respondent/claimant.

8. This Court is of the view that the Tribunal without considering the aforesaid pleadings and materials, has erroneously come to the conclusion that the accident had occurred due to the rash and negligent act on the part of the drivers of both the vehicles. It is also to be noted that in the award passed in OP.No.42/2003 arising out of the same accident, the claims Tribunal has rendered a finding that the accident was caused due to the rash and negligent driving of the driver of the auto rickshaw, in which the first respondent/claimant was travelling and exonerated the second appellant insurance company in paying the compensation. Hence, the finding of the Tribunal fixing 50% liability on the second appellant insurance company, has no legs to stand and is accordingly set aside.

9. As regards the quantum of compensation, the first respondent/claimant himself examined as P.W.1, who deposed that he was aged 21 years and was studying in III year B.E. Course in Adhiyaman Engineering College, Hosur. P.W.2/Doctor, who examined the claimant, deposed in his evidence that the first respondent/claimant sustained the following grievous injuries:

(i) A contusion measuring 10 x 10 cm, over right side shoulder

fracture of right clavicle and right side 6th rib;

(ii) A contusion over left side of the hip 5 x 1 cm;

(iii) A contusion over the left side knee and all over the body.

Ex.P6 is the disability certificate (25%) and Ex.P7 is X-ray. The Tribunal taking note of the materials and evidence adduced by the first respondent/claimant, has awarded Rs.50,000/- towards permanent disability, Rs.5,000/- towards transportation, Rs.5,000/- towards extra nourishment, Rs.15,000/- towards medical expenses, Rs.25,000/- towards pain and suffering and Rs.10,000/- towards loss of future earning capacity, which in the opinion of this Court, are fair, just and reasonable and the same cannot be said to be excessive and exorbitant at any stretch of imagination, considering the nature of the injuries sustained by the first respondent/claimant and in the given facts and circumstances of the case and hence, the same need not be interfered.

10. In fine, this Civil Miscellaneous Appeal is allowed by setting aside the finding of the Tribunal fixing 50% liability on the second appellant insurance company. No costs. Consequently, connected Miscellaneous Petition is closed. The third respondent Insurance Company is directed to deposit the entire compensation amount with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit, the Tribunal shall transfer the same to the savings bank account of the first respondent/claimant through RTGS within a period of one week thereafter. The second appellant insurance company is permitted to withdraw the amount, if any already deposited before the Tribunal, on making proper application.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Sub- Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

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

+1cc to Mr.P.Mani, Advocate Sr.63616
+1cc to Mr.J.Chandran, Advocate Sr.63301
+1cc to Mr.D.Bhaskaran, Advocate Sr.63619

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&
M.P.No.1 of 2008

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