

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.4052 of 2005

Krishnan

Appellant / Petitioner

Vs

1. Varadarajan

2. The New India Assurance Co Ltd

Rep by its Divisional Manager

Pondicherry

Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 28.07.2004 passed in M.C.O.P.No.320 of 2003 on the file of the Motor Accident Claims Tribunal, Fast Track Court, Tindivanam.

For Appellant : Mr.T.R.Rajaraman

For Respondents: For R1- Mr.S.Lakshmanasamy
For R2- Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant / claimant, as against the award of the Tribunal passed in M.C.O.P.No.320 of 2003 in respect of the accident, that took place on 11.10.1998.

2. On 11.10.1998, at about 11.00 am, while the claimant/ appellant herein was walking, he was hit by a two wheeler bearing Reg.No.PY 01 K 841, ridden by the 1st respondent herein, which was insured with the 2nd respondent herein. It is the case of the claimant / appellant herein that due to the accident, he sustained grievous injuries all over the body, and hence he filed a claim petition before the Tribunal claiming a sum of Rs.1,00,000/- as compensation. The Tribunal, based on the witnesses account and documents produced, has awarded a sum of Rs.35,850/- as total compensation payable to the appellant by the 1st respondent herein.

3. Heard both sides.

4. The learned counsel for the appellant submitted that the award passed by the Tribunal was too low, considering the

nature of injuries and the period of treatment taken by the claimant /appellant herein. He further submitted that the doctor has assessed the disability at the rate of 12%, but the Tribunal has taken into consideration the percentage of disability only at 8%, without any valid reason. He also submitted that when the Criminal case initiated against the rider of the two wheeler was subsequently closed as 'mistake of fact' and the Insurance policy was in force at the time of accident, the Tribunal ought not to have exonerated the Insurance Company from its liability to pay compensation to the appellant / claimant.

5. Per contra, the learned counsel for the 1st respondent contended that the manner, in which the Tribunal absolved the Insurance Company from its liability to pay compensation, is unsustainable.

6. The learned counsel for the 2nd respondent submitted that the rider of the two wheeler has no valid Driving License and he was also a minor at the time of accident. He further submitted that there is no delay in lodging the complaint. Hence, the Tribunal ought to have drawn adverse inference against the rider of the two wheeler and dismissed the claim petition.

7. On a perusal of the award passed by the Claims Tribunal, it is evident that the Tribunal after discussing in detail about the factum of the accident, found that the rider of the two wheeler has no valid driving license and that he was a minor at the time of accident. Further, the Tribunal has arrived at a conclusion that the owner of the vehicle allowed the rider to ride his two wheeler without any valid driving license. However, the Tribunal failed to take note of the fact that the Insurance Policy was in force at the time of accident and the Criminal case initiated against the rider of the two wheeler was subsequently closed as 'mistake of fact'. In such view of the matter, the Tribunal ought to have drawn adverse inference against the Insurance Company and directed them to pay compensation at first and recover it from the owner. Hence, fastening the liability on the first respondent alone is unjustifiable, as rightly contended by the learned counsel for the appellant and the same is accordingly modified to the effect that the 2nd respondent/Insurance Company is liable to pay the compensation to the appellant / claimant with a right to recover the same from the first respondent / owner of the vehicle.

8. As regards the quantum of compensation, based on the evidence available on record more particularly, PW 2, the Tribunal has taken the disability of the injured claimant at 8% instead of 12% as assessed by the doctor. The Tribunal has given convincing reasons to arrive at such a conclusion. Further, the

Tribunal has taken the monthly income of the claimant at Rs.1,500/-, applied the multiplier of 15 and arrived at Rs.21,600/- towards loss of income. That apart, the Tribunal has awarded Rs.2000/- towards Transportation charges, Rs.250/- towards damages to clothes, Rs.2,000/- towards extra nourishment and Rs.2,000/- towards pain and sufferings, totaling to Rs.35,850/-. The findings so recorded by the Tribunal on quantum are based on the probabilities of case and weight of evidence, which in the opinion of this Court, are perfectly justified and the same are hereby confirmed as such.

9. Accordingly, the Civil Miscellaneous Appeal is disposed of. The Insurance Company / 2nd respondent herein is directed to pay the compensation to the claimant / appellant herein (at first), with liberty to recover the amount from the owner of the vehicle / Varadarajan. No costs. Consequently, connected Miscellaneous Petition is closed.

10. The 2nd Respondent Insurance Company is directed to deposit the award amount along with interests and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount to the Savings Bank Account(s) of the injured/ claimant herein through RTGS, one week thereafter.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

srk / vrn

To

1. The Motor Accident Claims Tribunal/ Fast Track Court,
Tindivanam

2. The Section Officer

V.R.Section

Madras High Court

Chennai 104

+1 Cc to Mr.M.Krishnamoorthy, Advocate sr 59823.

C.M.A.No.4052 of 2005

RV (CO)

SP(20/02/2020)