

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1015 of 2010

D.Srinivasan

... Appellant/Claimant

Vs.

1. Raghunathan
2. New India Assurance Co. Ltd.,
Garden Apartments, 1st Floor,
No.68, Purasaiwalkam High Road,
Chennai - 600 007.
3. M/s.Nagarathinam & Sons,
No.114/1A, Bypass Road,
National Highway No.7,
K.Salaipudur, Madurai - 18.
4. New India Assurance Company Ltd.,
248-B, Rekha Towers,
Kamarajar Salai, Madurai. Respondents/ Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Award of the Motor Accident Claims Tribunal (Additional District Court (Fast Track Court No.I), Erode in M.C.O.P.No.154 of 2008 dated 31.12.2009.

For Appellant : Mr.A.K.Kumarasamy

For R2 & R4 : Mrs.R.Sreevidhya

R1 - Not Ready in Notice

R3 - Served - No Appearance

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Award dated 31.12.2009 made in M.C.O.P.No.154 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District Court (Fast Track Court No.I), Erode.

2. The case of the appellant is that on 28.01.2006, he was traveling as a passenger in a Maruthi Omni Van bearing Registration No.TN-01-W-9070 from Erode to Madurai. The Van was driven by one Prabhu and the first respondent herein is the owner of the said Van. At about 4.30 a.m., while the Van was proceeding on the Dindugal to Vedanchendur Road near Kakka Thoppu pirivu, the driver of the Van drove it in a rash and negligent manner with high speed and hit against a Tanker Lorry bearing Registration No.TN-59-H-6301 which was proceeding from the opposite direction, which was also driven in a rash and negligent manner. As a result of which, the appellant and other passengers of the Van sustained critical injuries and they were immediately taken to the City Hospital at Dindugul and admitted as inpatient. Later, the appellant was shifted to Erode Government Hospital for further treatment, and on clinical and radiological examination, he found to have sustained fractures over the left knee and left thigh and lacerated injuries over the upper lip, nose, left hand and all over the body. He was also operated over the left thigh and had spent lot of money towards medical treatment. In spite of better treatment, he was not fully cured and he became permanently disabled from doing any work.

3. He was aged 30 years at the time of accident and he was earning more than Rs.5,000/- per month as a Taxi driver. Now due to the permanent disability, he is unable to do any work and he suffers from loss of income. The first and second respondents are respectively the owner and insurer of the Maruthi Omni Van TN-01-W-9070 and the third and fourth respondents are respectively the owner and insurer of the Tanker Lorry TN-59-H-6301. The accident took place only due to the rash and negligent driving of the drivers of both Maruthi Omni Van and the Tanker Lorry and hence the appellant filed a Claim Petition against them before the Additional District Judge (Motor Accident Claims Tribunal), Fast Track Court No.I, Erode, claiming Rs.2,00,000/- as compensation under various heads.

4. The second and fourth respondents insurance companies denying such allegations filed a counter affidavit stating that the appellant is bound to prove that the driver of the lorry was having valid driving license and valid insurance policy on the date of accident. Further, the insured persons of the vehicles involved in the accident viz. the first and third respondents herein failed to appear before the Court and hence they suspects that they have colluded with the appellant and made the present claim. Moreover, the appellant has not produced any medical bill along with the claim petition, the same itself clearly reveals that he is trying to manipulate records to suit his fabulous claim. Thus, he is not entitled to claim any amount under the head of medical expenses.

5. It has also been stated in the counter affidavit that at the time of accident i.e. on 28.01.2006, the first

respondent's vehicle bearing Registration No.TN-01-W-9070 was insured in the name of Ragunathan, but the R.C. was in the name of one Arumugham. The ownership of the vehicle was not transferred. Further, at the time of accident, five passengers were traveled in the Maruthi Van including the driver, but as per the R.C., only four persons were allowed to travel in the said Van. Moreover, the first respondent had taken only liability policy which covered the third parties involved in the accident and he has not paid any extra premium to cover the passengers carried in the vehicle. Therefore, as per the terms and conditions of the Insurance Policy and Motor Vehicles Act, they are not liable to pay any compensation to the appellant.

6. In addition to the above, it has been stated in the counter affidavit as follows :

a) the age, income and occupation of the appellant is not admitted to be true and he is bound to prove the same by strict proof thereof;

b) the appellant is bound to prove the nature of injuries and the manner of medical treatment and the expenses incurred thereon through proper documentary evidence;

c) In any event, the appellant has not sustained any permanent disability and hence, he is not entitled to claim any compensation under the said head;

d) the various claims and expenses made in Column No.21 of the petition are highly excessive and out of proportion and the appellant is trying to make fortune out of misfortune;

e) any how the quantum of compensation claimed is highly exorbitant and the appellant is trying to have a wrongful gain if possible.

7. The Additional District Judge (Motor Accident Claims Tribunal), Fast Track Court No.I, Erode, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded a sum of Rs.40,635/- to be paid by the fourth respondent on behalf of the third respondent as compensation to the claimant. Aggrieved by the same, the appellant/claimant has filed this appeal before this Court

8. On perusal of the award dated 31.12.2009 passed by the Additional District Judge (Motor Accident Claims Tribunal), Fast Track Court No.I, Erode in M.C.O.P.No.154 of 2008, it is

observed that the appellant examined himself as PW1 and stated that the accident occurred only due to the rash and negligent driving of the drivers of both Maruthi Omni Van and Tanker Lorry. The respondents in order to disprove the same have not examined neither any eye witness nor the driver of the said Tanker Lorry on the side of them, and therefore, the Additional District Judge has come to the conclusion that both the drivers i.e. the driver of Maruthi Omni Van and the driver of Tanker Lorry are liable to compensate the claimant. Further, it is observed that the first respondent's Van was insured under the second respondent at the time of accident and the same was also proved by the document marked as Ex.R1 on the side of the respondents. But, one Arumugam was examined as RW2 and deposed that he already purchased the said Van from the first respondent and the same was also proved by the document marked as Ex.P4 on the side of the appellant/claimant, and therefore, the Additional District Judge has come to the conclusion that 50% of the compensation amount has to be claimed only from the present owner of the said Van and the same cannot be claimed from the first and second respondents herein. Moreover, it is observed that it was proved based on the document marked as Ex.P5 that the said Tanker Lorry belonged to the third respondent and the same was insured under the fourth respondent at the time of accident, and therefore, the Additional District Judge has come to the conclusion that only the fourth respondent has to pay the remaining 50% of the compensation amount to the appellant/claimant on behalf of the third respondent.

9. It is also observed from the award passed by the Court below that the appellant has not placed any material to show that he was working as a Taxi driver and was earning more than Rs.5,000/- per month before the accident, and therefore, he has been considered as a Coolie worker and his monthly income has been fixed as Rs.3,000/-. Further, it is observed that one Dr.Periyasami examined as PW2 and deposed that he was working in the L.K.M. Hospital at Erode, and when he had examined the appellant on 14.04.2009, he found that the appellant was operated on his left leg knee and thigh, and due to which, his movement has been restricted and he was not in a position to sit and stand and continue as a driver and he sustained 20% disability. The doctor has also marked the disability certificate and X-Ray copy of the appellant, and only based on which, the Additional District Judge has come to the conclusion that the appellant has sustained 20% disability and awarded Rs.30,000/- towards Permanent disability and Loss of future income. Moreover, it is observed that considering the nature of injuries sustained by the appellant, the Additional District Judge has awarded Rs.12,000/- for Loss of Income during the period of treatment, Rs.10,000/- each for Pain & Sufferings and Loss of Amenity and Rs.5,000/- for Extra Nourishment, which are found to be appropriate and this Court hereby confirms the same.

10. It is also observed from the award passed by the Court below that the appellant has placed all the medical bills before the Court below in order to prove the expenses made for the treatment, and only based on which, the Additional District Judge has awarded Rs.14,270/- under the head of Medical Expenses. Further, it is observed that the Additional District Judge has not awarded any amount under the heads of Transport and Attender's Charge. During the period of treatment, the appellant would have definitely spent some amount for transport and attender and hence, a sum of Rs.10,000/- each is awarded for Transport and Attender. Moreover, it is observed that the appellant has not added the said Arumugam, the present owner of the Maruthi Van, as a party in the claim petition and therefore, he was awarded only 50% of the compensation amount i.e. Rs.40,635/- which would be paid by the fourth respondent on behalf of the third respondent.

11. In view of the above observations, the compensation awarded by the Additional District Judge (Motor Accident Claims Tribunal), Fast Track Court No.I, Erode, is modified as follows :

S.No .	Description	Amount awarded by the Tribunal (Rs .)	Amount awarded by this Court (Rs.)	Award Confirmed or enhanced or granted
1.	Permanent Disability and Loss of Future Income	30,000	30,000	Confirmed
2.	Loss of Income during the period of treatment	12,000	12,000	Confirmed
3.	Pain and Sufferings	10,000	10,000	Confirmed
4.	Loss of Amenity	10,000	10,000	Confirmed
5.	Extra Nourishment	5,000	5,000	Confirmed
6.	Medical Expenses	14,270	14,270	Confirmed
7.	Transport Expenses	-	10,000	Granted
8.	Attender's Charge	-	10,000	Granted
	Total	81,270	1,01,270	Enhanced by 20,000/-

12. Since the appellant has omitted to add the present owner of the Maruthi Van, viz. Arumugam, in the petition, he is not entitled to receive 50% of the compensation amount as fixed by the Court below and hence he is awarded only Rs.50,635/- out of Rs.1,01,270/- which would be paid by the fourth respondent on behalf of the third respondent.

13. Accordingly, the fourth respondent insurance company is directed to deposit the said amount i.e. Rs.50,635/- 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. On such deposit being made, the appellant/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

raja
To

1. The Additional District Judge (Motor Accident Claims Tribunal),
Fast Track Court No.I, Erode.

2. The Manager,
New India Assurance Company Limited,
Garden Apartments, 1st Floor,
No.68, Purasaiwalkam High Road,
Chennai - 600 007.

3. The Manager,
New India Assurance Company Ltd.,
248-B, Rekha Towers,
Kamarajar Salai, Madurai.

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

+1cc to M/s.Sree Vidhya , Advocate SR.No. 102571

+1cc to Mr.A.K.Kumarasamy , Advocate SR.No. 102052

C.M.A.No.1015 of 2010

A.SK(16/07/2020)