

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.07.2019

Pronounced on : 18.09.2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

CMA.No.1374 of 2015  
and  
MP.No.1 of 2015

United India Insurance Co., Ltd.,  
No.19, Andiappa Gramani Street,  
Royapuram, Chennai. ....Appellant/2nd Respondent

Vs.

1. Vijayakumar

2.G.Kothandaraman ....Respondents/Petitioner/ 1st  
Respondent

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and decree dated 10.09.2014 passed in MCOP.No.838 of 2008 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.S. Arunkumar

For Respondents : Mr.A.A.Venkatesan for R1

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the United India Insurance Co., Ltd., against the judgment and decree dated 10.09.2014 in MCOP.No.838 of 2008 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

2.The brief facts of the case is as follows:

On 30.06.2007 at about 17.00 hrs, when the 1<sup>st</sup> petitioner/claimant was riding his motorcycle bearing Reg.No.AP-26-J-3336 along the Kavaraipettai opposite to RMD Engineering College from North to South direction, the driver of auto rickshaw bearing Regn.No.TN-01-4141 belonging to the second respondent insured by the appellant, drove rashly and negligently and dashed against the petitioner's vehicle and

thereby the first petitioner viz., V. Vijayakumar sustained grievous injuries. The claimant has stated that the accident occurred only due to rash and negligent on the part of the driver of the auto-rickshaw and hence claimed a sum of Rs.2,75,000/- as compensation.

3.The appellant/Insurance Company in the counter statement totally denied the mode of accident as stated in the claim application. The other contention raised by the appellant/Insurance Company is that the second respondent has not produced the vehicular records and the driving license for their verification and whether he has an insurable interest that was alleged that the driver of both the vehicle had a valid license. The first respondent has to prove his age, occupation and income with documentary evidence. This petition lacks bonafide for non-joinder of necessary parties of the other vehicle which has contributed to the cause of the accident. Further, they contends that the amount claimed under different heads are without any basis and highly excessive. The claimant did not discharge his burden of proving how the accident occurred and how he sustained injuries before the Tribunal properly. In spite of glaring discrepancies in observing the time, manner of accident, place of accident and involvement of the vehicle, the observation of the Tribunal is perverse. Hence, the appellant denied the liability as well as the claim made by the claimant.

4.The Tribunal after analyzing the evidence and documents has awarded a sum of Rs.1,00,000/- as compensation to the claimant and directed the Insurance Company to pay the said amount on behalf of the second respondent. Aggrieved against the compensation and liability, the Insurance Company, who is the appellant herein has preferred this appeal.

5. The appellant/Insurance Company also brought to the notice of this court that there are lot of discrepancies in the FIR as well as in the AR copy in respect of the vehicle involved in the said accident. There are some discrepancies found in the AR copy as well as in FIR and are placed before the tribunal, for which, the Tribunal has given an observation that the petitioner is not able to speak in Tamil because he is the resident of Andhra Pradesh and because of the language problem, the police officials and hospital authorities have committed an error and the hospital authorities have wrongly noted the occupation of the petitioner as student and also, the vehicle involved in the accident as bus. Further, the police authorities have also wrongly prepared the FIR by mentioning the date of accident as 02.07.2007 instead of 03.06.2007.

6. Heard, Mr.S. Arunkumar, learned counsel for the appellant and Mr.A.A.Venkatesan for the first respondent and perused all the materials available on record.

7. On perusal of records, it is seen that the first respondent/claimant has preferred the claim application claiming compensation for the injuries sustained by him due to the accident that occurred on 30.06.2007 while he was proceeding in the motorcycle, he was hit by the auto-rickshaw which was driven by the driver in a rash and negligent manner. It is also seen that the claimant has furnished the documents relating to nature of injuries sustained by him, period of treatment underwent by him, details of the owner of the vehicle and the insurer of the said vehicle. The claimant also claimed himself as a person of 20 years old and his occupation as mason and his monthly income has been stated as Rs.7,500/- p.m.

8. On the side of the claimant/1st respondent herein, Exs.P1 to P6 were marked and on the side of the Insurance Company, RW1 was examined and investigation report and AR copy were marked as Ex.R1 and Ex.R2 respectively before the Tribunal. Hence, as per the claim application, the respondent injured met with the accident on 30.06.2007 at about 17 hours. But the police officials in their statement has mentioned the date as 02.07.2007 and prepared the printed FIR. Further, the reason assigned by the Tribunal is that the injured /victim is a native of Andhra Pradesh and he is not fluent in Tamil language. Hence, the particulars in AR and FIR were wrongly registered by the concerned authorities. In respect of the occupation of the injured person also, it has been mistakenly noted by the hospital authorities that he is a student. Whereas, the petitioner is not a student and it is the hospital authority who prepared the said form on seeing his appearance. Regarding the place of accident also, in the Accident Register, it is mentioned as RMD Engineering College where as in the FIR, it is stated as JPR college Gummidipoondi.

9. As per the FIR averments, on 01.07.2007 at about 5.00 p.m., the claimant was proceeded in his two-wheeler in the Kaveraipettai. At the time, he was hit by the auto-rickshaw, which was also proceeding in the same direction behind the two wheeler of the claimant. Whereas in the FIR, the date of accident is registered as 30.06.2007. But the driver of the auto-rickshaw has admitted his guilty before the Magistrate Court. It is clear that the discrepancies in the FIR and the AR has not been considered by the Tribunal as of much importance since there is a language problem to the claimant. Further, the driver of the auto-rickshaw has also admitted the offence. The Tribunal has also given the explanation that the law relating to this claim which is a beneficial legislation is that 'whatever

the doubt or ambiguity are to be interpreted in favour of the victim'. So, the Tribunal has given a finding that though there are discrepancies with regard to the occupation of the injured, place of accident and involvement of the vehicle are all entirely contradicting each document, the petitioner is entitled for just compensation and further the said vehicle is also insured with the Insurance company. Though the Tribunal has discussed the pecuniary damages and the sum claimed by the claimant under various heads, it has awarded a just compensation of a lumpsum amount of Rs.1,00,000/-.

10. On hearing the learned counsel for the appellant and also on verifying the documents, the claimant in the proof affidavit has contended that he met with the accident in the manner as he has stated in the claim application but on the other hand, the Insurance company contended that there are lot of discrepancies in the hospital records and also the documents such as FIR and charge sheet. Hence, the Insurance Company also filed the investigation report and the appellant/Insurance Company also contended that in the FIR, the date of accident is mentioned as 01.07.2007 at about 17 hours, but in the claim application, it is stated as 30.06.2007. Similarly, the place of accident in the claim application is mentioned as opposite to RMD Engineering College and the vehicle involved is also mentioned as auto-rickshaw. In the discharge summary, it has been stated that the vehicle involved in the accident as bus but there is no document or evidence placed by the claimant. Further, the occupation of the injured person was stated in the claim application as mason and in the FIR, in the accident register, it has been recorded as student. Hence, first of all, whether the claimant is a mason or a student has not been clearly proved before the tribunal. Further regarding the involvement of the accident also, there is no clear evidence about the same. Whereas as the driver of the auto-rickshaw admitted the offence and paid fine. The investigation report also clearly proved the fact that the vehicle involved in the accident is the bus. Before the Tribunal, one witness was examined and the injured person's disability was assessed at 45%. After the said assessment, disability certificate was issued by the doctor after five years of the accident. It is the own admission of the injured person at the time of accident that he was working as a mason and he has claimed compensation for loss of earning capacity and loss of income. The copy of the Accident Register revealed the fact that the "alleged RTA while he was driving his motor cycle he was hit by bus near JPR College, Gummidipoondi, at 5.00 p.m., on 30.07.2007. The injuries sustained by him has been stated as a lacerated one and the date of accident has also been stated as 30.06.2007 and he was admitted at 6.40 p.m., in the hospital. The discharge summary reveals the fact that the date of admission is

01.08.2007 at 10.25 p.m., and date of discharge is 06.08.2007 at 2.00 p.m., and the discharge summary was issued by DSR District Head Quarters Hospital, Nellore. However, the discharge summary issued by the Department of Orthopaedic SMCH, in which, it has been stated that the vehicles involved in the accident are two wheeler and the bus, near Gummidipoondi at 30.06.2007 at 4.00 p.m., and the date of admission is 30.06.2007 and discharged on 07.07.2007.

11. Ex.P3 is the discharge summary showing the date of admission of claimant was on 01.08.2007 and discharged on 06.08.2007. Whereas Ex.P2 is also discharge summary shows the date of admission as 30.06.2007 and discharged on 07.07.2007 and it is a bus accident near Gummidipoondi at 30.06.2007 at 4.00 pm, and the injured is aged about 18 years.

12. The Tribunal inspite of number of contradictions found in the documents filed on the side of the claimant and also the evidence as well as the facts, has given an observation by stating that "any doubt or ambiguity are to be interpreted in favour of the victim." Therefore, the Tribunal based on the above view has concluded that the accident had occurred due to the negligence on the part of the driver of the auto. The claimant has also sustained injuries in the said accident.

13. The Tribunal has also observed that these authorities have committed error in their duty whereas the petitioner is the poor man who is in need of a just compensation. The Tribunal has further contended that no evidence was placed by the Insurance Company by way of investigation.

14. The appellant/ Insurance Company is very much aggrieved against the said observation made by the Tribunal by stating that evenhough number of controversies and contradictory facts found in the claim application regarding his occupation, age, time of accident and the involvement of the vehicle, date of accident and facts in the AR copy, the Tribunal has concluded that the accident occurred due to the negligent driving on the part of the driver of the auto-rickshaw and fixed the liability on the respondents 1 and 2 and directed to pay the compensation jointly and severally. Further the Tribunal has also made an elaborate discussion regarding the damages sustained by the claimant by discussing pecuniary damages and non-pecuniary damages and expenses occurred by the claimant for hospital, medicines, transportation and awarded a sum of Rs.1,00,000/- as lumpsum compensation. The reason is also given by the Tribunal for awarding the lumpsum at Rs.1,00,000/-

15. The above mentioned guess work are considering the factors viz., socio economic living condition age injuries and

medical treatment. Also considering Article 21 of our Constitution with ruling Ibrahim Vs.Raju(4) 2001 ACC page No.678 (SC) Rajkumar Vs. Ajay Kumar 2011 (1) SCC page No.343 and the book by Justice JR Midha law relating to Motor Accident Claims reprint 2013 and considering the single digit inflation in our economy with abnormal price index. The Tribunal also observed as

"the present case is a routine personal injury case and the compensation is awarded under the respective heads."

16. The contention relied by the claimant before the Tribunal is that in point No.8 is extracted as follows:

(i) The injured victim petitioner has sustained injuries in the road accident dated 30.06.2008 at about 5.00 pm. The accident occurred on 01.07.2007 as per Ex.P1. He was brought by Ambulance along with one Mr.Deena to Government Hospital at about 6.30 p.m., The police officials has related the statement of the petitioner dated 02.07.2007 and prepared printed FIR on the same date Ex.P.2. The wrong documents has admitted the offence and paid fine before Hon'ble Magistrate Court. Now the OP claim petition pending for just compensation to the petitioner."

17. Ex.R1 is the investigation report which says as per CD index the vehicle involved in the accident is noted as LMV-3 wheeler and the owner of the vehicle bearing Regn. No.TN 01 4141.

19. "The discrepancies in the investigation report are as follows:

d. Explain on the genuinity of the accident based on your collection of documents, enquiries made with parties connected with the claim namely insured, driver, claimants, legal heirs and with authorities namely police, RTO, employer, etc.,

1. As per FIR the date of accident was 01.07.2007 at 17.00 hours opposite to RMD Engineering College, Kaverapet but as per AR 3541615 and Wound Certificate of Government, Stanley Hospital the date of accident was 30.06.2007 at 17.00 hours near JPR Colelge, Gummidipondi.

2. As per AR the victim was hit by a bus but in FIR the involved vehicle is Auto.

3. The owner of the Auto Kondadaraman sold the vehicle to Tr.Murali on 20.09.2008.

4. On investigating Kondandaram (Insured) orally stated that he used vehicle for commercial purpose (but it is for private purpose).

5. Tax paid upto 31.03.2009."

18. In view of the above discrepancies made in the investigation report, this Court is of the opinion that the findings of the Tribunal stating that beneficial legislation is not proper. Further, inspite of the number of discrepancies with in respect of claimant's age, occupation, date and involvement of the accident, the lumpsum compensation of Rs.1,00,000/- awarded by the tribunal is not proper.

19. Hence, in the absence of any relevant and clear evidence, fixing negligence on the part of the driver of the auto and fastening the liability on the insurance company being the insurer of the said auto cannot be accepted and the judgment of the Tribunal is liable to be set aside.

20. In the result, this Civil Miscellaneous Appeal is allowed by setting aside the liability fixed on the Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

21. The appellant/Insurance Company is permitted to withdraw the amount deposited, if any. The owner of the vehicle/second respondent herein is directed to pay the compensation awarded by the Tribunal along with interest within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/claimant is permitted to withdraw the award amount granted by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal.

Sd/-  
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1. The Motor Accident Claims Tribunal,  
VI Court of Small Causes, Chennai.

2. The Section Officer,  
V.R. Section, High Court, Madras.

+1 cc to Mr.S.Arunkumar, Advocate, sr.80327.

nmi (co)  
krd 16/9

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and  
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