IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2019

Pronounced on : 28.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2473 of 2011
and
MP.No.1 of 2011

M/s. The Oriental Insurance Company Ltd.,
Thiruvallur. : Appellant/2nd Respondent

Versus

1.D.Selvanathan : 1st Respondent/Claimant

2.M/s.Devi Cabs,
No.40/1, 12th Avenue,
Ashok Nagar,
Chennai - 83. : 2nd Respondent/ 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.12.2006 and made in M.C.O.P.No.93 of 2005 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Poonamallee, Thiruvallur District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.A.Murugan

JUDGMENT

The Insurance Company is the appellant herein. Challenging the award dated 29.12.2006 passed in M.C.O.P.No.93 of 2005 on the file of Motor Accidents Claims Tribunal (Subordinate Judge), Poonamallee, Thiruvallur District, the present appeal has been filed.

2.The 1st respondent herein is the claimant before the Tribunal. It is the case of the claimant that on 01.02.2004, at about 7.20 a.m., while the claimant was riding bicycle at Anna Salai, from north to south, a TATA Indica DLE, Car bearing registration No.TN-09-AD-5655 was driven by its driver in a rash and negligent manner from the opposite direction and hit the claimant's cycle, which resulted in the accident. The TATA Indica DLE, Car was insured with the appellant/Insurance company. In the said accident, the claimant sustained fractures on left clavicle, eighth and ninth right ribs right, severe abdominal injuries and multiple injuries all over the body. Hence, he made a claim for compensation of Rs.11,21,000/- as against the owner of the vehicle as well as its insurer/appellant herein.

3.The appellant/Insurance company has filed a detailed counter to the claim petition by denying the averments made by the claimant with respect to his age, occupation, income and the manner in which the accident said to have occurred, and prayed for dismissal of the claim petition.

4.Before the Tribunal, the claimant was examined as PW.1, Dr.Saichandran as PW.2, Dr. Gopalan as PW.3 and one Shanmugam as PW4 and nine documents were marked as Ex.P1 to P9. On the side of the respondents, one Rudolph Vanderveen was examined as RW.1, who is the investigation officer of the Insurance Company and Exs. R1 to R7 were marked. Upon analysing the oral and documentary evidence, the Tribunal awarded a sum of Rs.1,32,000/- as compensation to the claimant.

5.The learned counsel appearing for the appellant/Insurance company would vehemently contend that the Car, which was insured with the appellant company, has not involved in the accident in question at all and the claim made by the claimant is legally not sustainable. Further, according to the learned counsel for the appellant/Insurance company, the son of the claimant has given a complaint, based on which the First Information Report came to be registered, after ten days of the accident. Even in the first information report, Ex.P1 coupled with Ex.R4, it was only stated that a Maruti Zen Car has involved in the accident and not the TATA Indica Car, which was insured with the appellant company. Furthermore, he submitted that the place of accident was indicated in the claim petition and Ex.R3/Accident Register as Alwarpert, but, it is stated in the proof of affidavit that the accident had taken place at Teynampet. Therefore, the involvement of the Tata Indica Car which was insured with the appellant company has not been established by the claimant and the Tribunal ought not to have directed the appellant/Insurance company to pay the compensation.

6.The learned counsel for the appellant also inter alia would contend that the amount of compensation awarded by the Tribunal is excessive. The claimant was aged 50 years at the time of accident and there is no proof to show the income or the nature of avocation of the claimant. In such circumstances, the counsel for appellant/Insurance company has prayed for allowing this appeal.

7.Per contra, the learned counsel appearing for the claimant/respondent would contend that Tribunal, on the basis of the evidence adduced by the claimant as PW1 and the two Doctors, who were examined as PW2 and 3, has correctly come to the conclusion that the injuries sustained by the claimant in the accident has been proved. Taking note of the injuries sustained by the claimant, the Tribunal has awarded a just and fair compensation and it does not call for any interference.

8.I have heard the learned counsel appearing on either side and perused the materials available on record.

9.After hearing the both sides arguments, it is seen that the Insurance company has taken a specific plea that the car which was insured with them has not involved in any accident at all as alleged in the claim petition. The appellant/Insurance company has also taken a defence before the Tribunal that the claimant, in collusion with the police, has filed a false petition seeking compensation.

10.On a perusal of Ex.P1/FIR, it is seen that the FIR was lodged by the injured/claimant's son stating the scene and the place of accident as held at Teynampet in Mount Road and pursuant to the complaint, the evidence of PW.1 is that the claimant was proceeding from Teynampet to Pazhavanthangal via Cenotaph road in Mount road. While going so, he sustained injuries due to the accident.

11.This Court takes the judicial notice of the fact that Cenotaph road, is in between Alwarpet and Teynampet. The South east of the Cenotaph road is Alwarpet, while the North west of road is Teynampet. It is the specific case of the claimant that the accident has taken place at near the LR Swamy building, which is the land mark in Chennai. When that being the case, this Court has no hesitation to hold that as description as to the place of accident is clearly made out. Even in the claim petition, the claimant has categorically stated that he was proceeding from the road of Alwarpet to Pazhavanthangal via Mount road and hence, this Court has no hesitation to reject the contention raised by the appellant/Insurance company.

12.The main contention of the Insurance company is that the place of the accident mentioned in Ex.R3/AR copy issued by the ESI Hospital as Alwarpet, whereas, in the FIR copy, it was mentioned as Teynampet. Even though the place of accident mentioned in the documents is different, the accident occurred in the junction of the two places. In view of the discussion in the proceeding paragraph, the place of accident is clearly spell out by the claimant.

13.The next contention of the Insurance company is that delay in filing FIR. In this regard, admittedly, there is a delay in filing FIR, which was given by the claimant's son. Since his father suffered multiple fracture and injuries, he admitted the claimant in the hospital for the treatment of fracture on the clavical bone and fracture on the 8^{th} and 9^{th} bone of rib on the right side. After scanning him, it is found that there was blood oozing in his ruptured spleen, it lost its functioning and the spleen was partly removed. In such circumstances, this Court cannot find fault with the son, filing the FIR with few days delay, when his father is admitted in the ESI Hospital at serious condition. Hence, the complaint lodged belatedly by itself, cannot be a ground to raise suspicion on FIR. As delay in filing the FIR is properly explained by the claimant and furthermore, when father was admitted in the hospital with serious injuries, as in the present case, son cannot be expected to file FIR immediately and hence, the reason assigned by the claimant for preferring the complaint to the police is clearly explained and hence the same cannot be put against the claimant. Accordingly, the plea of the appellant is negatived.

14.Learned counsel for the Insurance company has also drawn the attention of this Court that in the ESI book/Ex.P2, the first three pages were tored in the note book, hence he contended that, the same is not admissible. This Court has given its anxious consideration to the said contentions and however to the dismay in the documentary evidence of Ex.R3 contains necessary endorsement by the Doctor as well as the Superintendent of the Hospital. The book issued to the claimant shows that he sustained injuries, admittedly, he took treatment as an in-patient in the ESI, Hospital. Hence, it is held that the said contention raised by the Insurance company stands negative. Hence, the compensation of Rs.1,32,000/- awarded under the various heads by the Tribunal appears to be reasonable. This Court does not find any valid reason to interfere with the award passed by the Tribunal. The appeal filed by the appellant/ Insurance company is therefore dismissed as devoid of merits and the award passed by the Tribunal is hereby confirmed.

15.In the result,

(i) the appeal filed by the Insurance Company is dismissed by confirming the award dated 29.12.2005 passed by the Motor Accidents Claims Tribunal, Subordinate Court, Poonamallee in Thiruvallur.

(ii) the appellant/Insurance Company is directed to deposit the award amount as determined before the Tribunal, along with costs and interest at the rate of 7.5% per annum, within a period of eight weeks from the date of receipt of a copy of the Judgment.

(iii) On such deposit being made, it is open to the claimant/first respondent herein to withdraw the entire award amount by making necessary application before the Tribunal.

(iv) There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
(Subordinate Judge), Poonamallee, Thiruvallur District.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

Judgment in
CMA.No.2473 of 2011

KJI(CO)
CSR: 03/01/2020