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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No. 1279 of 2016

Manjunathan

... Appellant/Petitioner

Vs.

1. S.Prakash

2.M/s. New India Assurance Company Ltd.,
Divisional Office,
No.1, Officer's Line,
Vellore.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.02.2016 made in M.C.O.P.No.46 of 2012 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant : M/s.C.Prabakaran

For R2 : Mr J. Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant to set aside the judgment and decree dated 03.02.2016 made in M.C.O.P.No.46 of 2012 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore..

2.The appellant is claimant in M.C.O.P.No.46 of 2012 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. He filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.07.2005. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to the

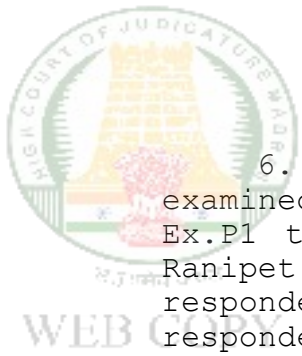


negligence on the part of the claimant himself, who was under influence of alcohol at the time of accident and dashed upon the Trailer after passing of Tractor, therefore the claimant is not entitled for compensation and dismissed the claim petition. Challenging the same, the claimant/appellant herein has come out with the present appeal to set aside the the said award and for compensation.

3.The learned counsel appearing for the appellant/claimant contended that the Tribunal failed to consider the fact that the injured was walking in the road carefully, while so, the vehicle belongs to the 1st respondent came in a rash and negligent manner and dashed against the injured. The tribunal failed to not that merely because the injured was consumed alcohol would not amount to find that he had invited the accident. The FIR also does not reflect that the injured was under the influence of alcohol, in the absence of such averment the finding of the tribunal is liable to be set aside. The tribunal ought to have gone into other issued by assessing disability based on the deposition of PW2 and Ex.P8. It is further contended that the tribunal erred in dismissing the claim petition on contrary to settled principles of law that findings of the criminal proceedings will not be looked into for any purpose in respect of civil proceedings, hence prayed to set aside the judgment and decree passed by the tribunal.

4. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the driver of the 1st respondent's vehicle was driving very slowly , cautiously, sounding horn several times, while so the petitioner crossed the road under the influence of alcohol and without following traffic rules and regulations dashed and hit against the 1st respondent Tractor and Trailor bearing Registration NO. TMT-7317 and TMT -7981 and sustained injuries. The 2nd respondent denied the statement of the injured that he was working as collee and was earning Rs.6,000/- per month. In any event, the claim of the petitioner is very huge . Further argued that the tribunal after analysing the evidence and documents, has dismissed the claim petition and in this appeal also the appellant has not made out any grounds to set aside the said judgment or for enhancement, hence prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as 2nd respondent/Insurance Company and perused all the materials available on record.



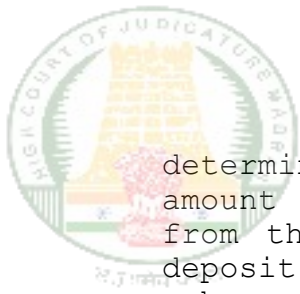
6. It is seen from the records that the appellant himself examined as PW1 and Dr.R. Shanmugasundaram examined as PW2. The Ex.P1 to Ex.P9 marked on the side of the petitioner. RW1-RTO, Ranipet and RW2-Hariharamoorthy examined on the side of respondents. Ex.X1 to Ex.X2 marked on the side of 2nd respondent.

7. It is also seen from the records that according to the petitioner/appellant on 26.07.2010 at about 12.30 hrs while he was walking on the road, near Raja Tea Shop, the 1st respondent driver drove the vehicle in rash and negligent manner and dashed against him and he sustained injury. Ex.P1 -FIR was registered against the 1st respondent by the Ranipet Police Station. On perusal of FIR which was registered on the complaint of one Babu, it is seen that he has clearly that a person aged about 30 years has crossed the road under influence of alcohol, uncontrollable condition and dashed upon the Trailer and fell down under the front side wheel of the Trailer. Hence it is clear that he was under uncontrollable condition at the time of the accident.

8. Further, it is seen that the said FIR was closed as 'Mistake of Fact' and this was proved through Ex.R1 -RCS report. Ex.P2 Medical Report also proves that the injured has consumed alcohol at the time of the accident. Though Ex.P3 -medical report, Ex.P5-Discharge summary, Ex.P8 Disability Certificate and the evidence of PW2 -Ortho Doctor have clearly shows that the appellant has suffered injuries and taken continuous treatment and sustained 45 % disability, but it is clearly proved that the appellant alone is responsible for the accident, hence finding of the tribunal in fixing negligence on the part of the claimant/appellant is proper. However, considering the nature of injuries, this Court is inclined to award some amount under the head 'No fault liability'. Accordingly, a sum of Rs.25,000/- is granted under the said head on costs of Rs.5,000/-.

9. In the result, the Judgment and Decree dated 03.02.2016 made in MCOP No. 46 of 2012 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore is set aside. The Civil Miscellaneous Appeal is partly allowed.

10. The 2nd respondent/Insurance Company is directed to deposit a sum of Rs.25,000/- the entire award amount now



determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The I Additional District and Sessions Court,
(Motor Accident Claims Tribunal)
Vellore.

+1cc to Mr.C.Prabhakaran, Advocate Sr.76790

C.M.A.No.1279 of 2016

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