

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.09.2018

Delivered on : 15.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.359 of 2015

The Divisional Manager,
M/s. United India Insurance Co Ltd.,
No. 146-N, Kumar Complex,
Tiruchengodu. ... Appellant/2nd Respondent

-Vs-

1.Karthick ...1st Respondent/Petitioners
2.Saraswathi ...2nd Respondent/1st Respondent
3.The Superintendent of Police,
Namakkal. ... 3rd Respondents

(R-3 impleaded vide court order dated 28.07.2015
made in CMA.No.359/15)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 18.03.2014 made in MCOP.No.105 of 2013 on the file of Motor Accident Claims Tribunal /Additional District Judge at Namakkal.

For Appellant : Mr.J.Chandran

For Respondent : Mr.C.Kulanthaivel (for R1)

Mr.M.Venkatesh Kumar (for R3)
Government Advocate (CS)

JUDGMENT

Aggrieved by the award dated 18.03.2014 passed by the Tribunal in M.C.O.P.No. 105 of 2013, the appellant/Insurance company have preferred this Civil Miscellaneous Appeal challenging the liability and quantum of compensation.

2.For convenience, the parties are referred to as per their claim petition.

3.The facts in nutshell are as under: On 01.12.2012 at about 12.20 P.M., the claimant while trying to cross the road near Manickampalayam Panchayat Office, the driver of offending vehicle driven the car in rash and negligent manner and caused the accident due to which the claimant suffered injuries and filed claim petition claiming compensation as sum of Rs.10,00,000/- from the respondents jointly and severally .

4.Resisting the claim petition, the 2nd respondent/insurance company has filed the counter, and disputing the manner of accident and liability of insurance company. In the counter, the respondent also, further denied the age, occupation and loss of earning of the injured and prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimant examined P.W.1 & PW-2 and marked Ex.P-1 to Ex.P-7 and On the side of the respondent/Insurance company R.W-1 & 2 were examined and Exs.R-1 to R-3 were marked.

6.Upon consideration of oral and documentary evidence, the Tribunal held that accident happen due to rash and negligent driving of offending vehicle and award a sum of Rs. 1,50,000/- to the claimant and held the respondents are jointly and severally liable to pay compensation. Aggrieved by the award the appellant challenging the liability and quantum of compensation.

7.Aggrieved by the award of the Tribunal, the appellant has filed the present appeal. The argument of the appellant counsel is that, due to the rash and negligent driving of the injured alone this accident happen, he only drove the vehicle in wrong side without adhering traffic rules and regulations and the charge sheet also closed as mistake of fact, moreover he don't posses valid driving license to drove the vehicle and he is only tort-feasor and he can't claim compensation under Motor Vehicle Act and the quantum of compensation is ex-orbitant and

disability assessed by doctor is higher side and prays allowing the appeal and to set aside the award.

8.Per contra, the learned counsel for the respondent/injured claimant submitted that the tribunal after appreciating the oral and documentary evidence rightly held that due to rash and negligent driving of appellant vehicle alone accident occur and the compensation granted by tribunal is reasonable, moreover in motor accident case standard proof beyond reasonable doubt will not applies as in criminal matters. Moreover the criminal courts records will not bind over the tribunals, the claimant proves their case in only the touchstone of preponderance of probability and also he relied ruling of apex court and the order of tribunal need not be interfere by this court and prays for dismissal of appeal

9.I have heard Mr.J.Chandran, learned counsel for the Appellant, Mr.C.Kulanthaivel, learned counsel for the 1st respondent and Mr.M.Vemkatesh Kumar, learned Government Advocate (CS) for the 3rd respondent and also perused the materials available on record.

10.In so far as liability and negligence concerned the accident is admitted by both parties only the manner of accident alone disputed, from the record its shows as per Ex.P-1 FIR was registered against only the offending vehicle driver, if the driver of offending not involved in the accident definitely he will made complaint against the injured but here the injured alone made complaint against the driver and subsequently no steps was taken by offending vehicle driver and though the charge sheet Ex.R-1, shows that the case was closed as mistake of fact, as rightly point out by the counsel for respondent, the criminal court records will not bind Motor Accident Claims Tribunal and the tribunal can arrive conclusion independent by appreciating the evidence before it. As per evidence let by the parties in cross examination PW-1/injured has clearly states after crossing the road alone accident occurs, not at the time of crossing road. In the cross examination of RW-1, Police official, also clearly admits though the case was closed as mistake of facts, No RCS served to the de facto complainant and no documents was produced before the tribunal to sustain their evidence. The counsel for the respondent also submits that the claimant proves their case in only the touchstone of preponderance of probability not as criminal case proof beyond doubt and also he relied some ruling of apex court in the aspects.

1).Kusum Lata and Ors. -Vs- Satbir reported in (2011) 3 SCC 646.

2).Bimla Devi and Ors. -Vs- Himachal Road Transport Corp & ors reported in (2009) 13 SCC 530.

By considering facts and circumstance of case and entire evidence on record and rulings of apex court hence I hold that order of tribunal regarding liability is correct and does not call for any interference with regard to negligence and liability by this court.

11.As far as quantum of compensation is concerned, the injured sustain fractures in right shoulder and right hand and left hand and he also inpatient for 2 days as per Ex.P-4 Discharge Summary, Ex.P-2 wound Certificate shows nature of injury and the doctor was examined as PW-2 and he assessed disability 25% and based on the evidence on record the tribunal awarded a sum of Rs. 1,50,000/-. This court feels the amount granted under the various are reasonable one hence no interference required by the court.

12. Therefore, in view of the afore said discussions and findings, no interference is called for with the Award of the Tribunal. In fine, the Award of the Tribunal is confirmed, and the Appeal is dismissed without costs. The Appellant Insurance Company is directed to deposit the entire award amount with interest and costs to the credit of MCOP.No.105 of 2013 on the file of MACT/Additional District Court at Namakkal within a period of four weeks from the date of receipt of copy of the judgment, less amount if any. In the event of such deposit, the Claimant is entitled to withdraw the entire sum without there being a any formal application for permission. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

vs
To

1.The Motor Accident Claims Tribunal,
Additional District Court,
Namakkal.

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

+1cc to Mr.J.Chandran, Advocate SR.No.24791

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.24579

+1cc to Special Government Pleader(CS), High Court, Madras
SR.No.24440

C.M.A.No.359 of 2015

GP (CO)
GMY (11/12/2019)



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