



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2020

CORAM

THE HON'BLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1214 of 2011

Nallasamy
S/o.Pethan

... Appellant/Petitioner

- Vs -

1.Sathish
S/o.Sekar

2.Sadhasivam
S/o.Nagan

[Notice to respondents 1 & 2 may be dispensed with
since they were set exparte before the Tribunal]

3.Reliance General Insurance Co. Ltd.,
Spurtank, Chetpet, Chennai-600 031.

... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the order dated 18.10.2010 made in M.C.O.P.No.142 of 2008 on the file of the Motor Accident Claims Tribunal (Sub Court), Bhavani.

For Appellant : Ms.Gayathri
for M/s.C.Kulanthaivel

For Respondents: R1 & R2 - Exparte before Tribunal
Mr.S.Arunkumar for R3

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant, aggrieved by the order dated 18.10.2010 made in MCOP.No.142 of 2008 by the Motor Accident Claims Tribunal, Sub Court, Bhavani by raising the following ground:-

1. The Tribunal has failed to consider the nature of injuries sustained by the claimant and also failed to consider the evidence of PW-2-Doctor and Ex.A7-disability certificate.



2. The case of the appellant is that on 05.11.2007 at about 6.30.p.m when the claimant was walking from Manickampalayam to Periyavalasu near Vakkil Thottam Puthu Gate, he was finishing his coolie work and returning to his home at that time, a TVS XL Super vehicle bearing registration No.TN-33-AJ-8730, which was driven by the first respondent in a rash and negligent manner, dashed against him. Due to the said accident, the claimant sustained grievous injuries all over his body and his leg bone fractured and hence, filed a claim petition seeking an amount of Rs.2,00,000/- as compensation. The claimant was taken to Harini Hospital at Erode and got first aid treatment and thereafter, admitted at Government Hospital, Erode as in-patient and took treatment from the date of accident up to 45 days.

3. A counter statement was filed by the third respondent denying all the averments and stated that the claimant has to prove that the vehicle was insured with the third respondent at the time of alleged accident and Insurance policy was in existence at the same time and the liability of the third respondent if any, is subject to the terms and conditions of the policy. It is further stated that the FIR of the North Police Station reveals that the claimant was not able to give the number and identification of the vehicle, which was alleged to be dashed against him and there was a delay of one day for registration of complaint by the police and that too without any registration number of vehicle, which involved in the alleged accident. Therefore, the third respondent prayed for dismissal of the claim petition.

4. On the side of the claimant, three witnesses have been examined and Exs.P1 to P8 were marked. On the side of the respondent, one witness has been examined and one exhibit was marked. The Court below, after considering the oral and documentary evidence, has awarded a sum of Rs.71,000/- as compensation with 7.5% interest and directed the respondents 2 and 3 to pay the said compensation jointly and severally, by judgment dated 18.10.2010. The amount awarded by the Tribunal is tabulated below:-



Heads	Amount (Rs.)
Loss of income	6,000
Transportation	2,000
Nutrition	3,000
Medical Expenses	5,000
Pain and sufferings	25,000
For disability	30,000
Total	71,000

Aggrieved by the said judgment, the claimant preferred the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellant submitted that the appellant/claimant was a coolie worker and was earning a sum of Rs.4,500/- per month. He is the only bread winner of his family and after the accident, he was unable to move his leg and not able to walk, sit, stand and could not able to do any work. He would submit that the Court below erroneously awarded a sum of Rs.71,000/- when the claim was for Rs.2,00,000/-.

6. The learned counsel for the third respondent would submit that the alleged vehicle was not involved in the said accident. The FIR reveals that the claimant was unable to give the number and identification of the vehicle, which was alleged to have dashed against him. There was a delay of one day in registering the complaint by the police. Therefore, it is suspicious and doubtful about the involvement of the insured vehicle in the said accident. The claimant had influenced the investigating officer and implicated the insured vehicle in the alleged accident. In such circumstances, the Insurance Company is not liable to pay any compensation to the claimant.

7. Heard both sides and perused the available materials on record.

8. On going through the materials available on record, the Court below, after considering the various aspects, has come to the conclusion that only due to the rash and negligent act of the driver of the offending vehicle, the accident had occurred and fastened the liability on the respondents 2 and 3. Delay of one day in registering the FIR is negligible and the relatives would be in the mind of safeguarding the life of the injured. The injured is a coolie and definitely, he would not be in a



position to influence the Investigating Officer to implicate the insured vehicle. The Court below has considered the factual aspects and in the absence of any concrete evidence to prove the case of respondents, has rightly allowed the claim petition. On going through the entire materials available on record, this Court is inclined to modify the amount awarded under the head of loss of income and nutrition and it will be just and reasonable to award a sum of Rs.1,000/- towards damages to cloths and a sum of Rs.2,000/- towards attendant charges. Regarding the disablement, pain and sufferings and Medical expenses, the Court below has rightly awarded a sum of Rs.30,000/- for disability factor, Rs.25,000/- towards pain and sufferings and Rs.5,000/- towards Medical Expenses, which are reasonable. The final amount of compensation now determined is tabulated below:-

Heads	Amount (Rs.)
Loss of income [4000X3 months]	12,000
Transportation	5,000
Nutrition	5,000
Attender Charges	2,000
Medical Expenses	5,000
Pain and sufferings	25,000
For disability	30,000
Total	84,000

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The respondent is directed to deposit Rs.84,000/-, less if any amount already deposited, with interest at 7.5% per annum, within a period of eight weeks from the date of receipt of a copy of this order, whereupon, the claimant would be entitled to withdraw same forthwith. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KMI
To

1. The Sub Judge,
Motor Accident Claims Tribunal,
Bhavani.



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

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+1cc to Mr.C.Kulanthaivel, Advocate Sr.576
+1cc to M/s.S.Arunkumar, Advocate Sr.686

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srg 19/08/2021