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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1449 to 1452 of 2011

Janaki Raman	.. Appellant in C.M.A.No.1449/2011 / Petitioner in MCOP.99/2000
M. Venkatesan	.. Appellant in C.M.A.No.1450/2011 / Petitioner in MCOP.100/2000
Harikumar	.. Appellant in C.M.A.No.1451/2011 / Petitioner in MCOP.105/2000
Srinivasan	.. Appellant in C.M.A.No.1452/2011 / Petitioner in MCOP.107/2000

Vs.

1.Durai

2.Mohammed Sariff

3.The New India Assurance Co. Ltd.,
Vellore.

.. Respondents /
Respondents in all C.M.As.

(R1 remained exparte before the Tribunal)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree dated 20.02.2002, made in M.C.O.P. Nos.99, 100, 105 & 107 of 2000, on the file of the Sub Court, (Motor Accident Claims Tribunal) Vellore.

(In all appeals)

For Appellant : Mr. M. Sivakumar for
Mr.C.Prabakaran

For Respondents : No appearance (For R1)
R2 Not Known
Ms.S.R.Sumathy (For R3)



COMMON JUDGMENT

These matters are heard through "Video Conferencing".

C.M.A.Nos.1449, 1451 & 1452 of 2011 have been filed against the award dated 20.02.2002, made in M.C.O.P. Nos.99, 105 & 107 of 2000, on the file of the Sub Court, (Motor Accident Claims Tribunal) Vellore.

C.M.A.No.1450 of 2011 has been filed for enhancement of the compensation granted by the award dated 20.02.2002, made in M.C.O.P. No.100 of 2000, on the file of the Sub Court, (Motor Accident Claims Tribunal) Vellore.

2.The issue involved in all the appeals are one and the same and hence, they are disposed of by this common judgment.

3.The appellant/claimant in all the appeals filed M.C.O.P. Nos.99, 100, 105 & 107 of 2000, on the file of the Sub Court, (Motor Accident Claims Tribunal) Vellore, claiming a sum of Rs.40,000/-, Rs.75,000/-, Rs.20,000/- and Rs.15,000/- as compensation for the injuries sustained by them in the accident that took place on 12.05.1994.

4.According to the appellant in all the appeals, on the date of accident, when they traveled in a Van bearing Registration No. TN-23-A-4556 belonging to the 2nd respondent and driven by the 1st respondent from Srivilliputhur to Coutrallam, at about 10.30 a.m., the 1st respondent drove the Van at a great speed in a rash and negligent manner and dashed against a tamarind tree near Singilipatti Village and caused the accident. In the accident, appellant in all the appeals along with co-passengers sustained injuries. The accident occurred due to rash and negligent driving by the 1st respondent, driver of the Van belonging to the 2nd respondent and hence, appellant in all the appeals filed the present claim petitions, claiming compensation against the respondents 1 to 3, as driver, owner and insurer of the offending vehicle respectively.

5.The 1st respondent remained exparte before the Tribunal.

6.The 2nd respondent filed counter statement in all the claim petitions and denied all the averments made by the appellant in all the appeals. According to the 2nd respondent/owner of the Van involved in the accident, at the time of accident, the 1st respondent driver of the Van possessed valid driving license and the Van had permit to ply on road and hence, he is not liable to pay any compensation to the appellants and the 3rd respondent-Insurance Company is only



liable to indemnify the compensation claimed by the appellant in all the appeals. In any event, the total compensation claimed by the appellant in all the appeals is excessive and prayed for dismissal of the claim petitions.

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7.The 3rd respondent-Insurance Company filed counter statement in all the claim petitions and denied all the averments made by the appellant in both the appeals. According to the 3rd respondent, appellant in all the claim petitions have to prove that the Van bearing Registration No. TN-23-A-4556 belonging to the 2nd respondent was insured with the 3rd respondent at the time of accident, the 1st respondent/driver of the Van had valid driving license, the Van had valid fitness certificate, registration certificate and permit to ply on road. The appellant in all the appeals also have to prove their age, avocation and income, disability suffered and treatment taken to claim compensation. In any event, the total compensation claimed by the appellant in all the appeals is excessive and prayed for dismissal of the claim petitions.

8.Before the Tribunal, the appellant in all the appeals examined themselves as P.W.3, P.W.4, P.W.7 and P.W.9 respectively, appellant in C.M.A.No.1450 of 2011 examined Doctor as P.W.10 and appellants marked 27 documents as Exs.P1 to P27. The respondents examined 1st respondent as R.W.1 and one eye-witness as R.W.2 and marked 4 documents as Exs.R1 to R4.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the 1st respondent, driver of the Van is responsible for the accident and directed the 3rd respondent who is the insurer of the offending vehicle to pay a sum of Rs.8,000/- as compensation to the appellant in C.M.A.No.1450 of 2011 and dismissed the claim petitions in C.M.A.Nos.1449, 1451 and 1452 of 2011.

10.Against the order of dismissal dated 20.02.2002, made in M.C.O.P. Nos.99, 105 & 107 of 2000, the appellants have come out with C.M.A.Nos.1449, 1451 & 1452 of 2011.

11.Not being satisfied with the amount awarded by the Tribunal in the award dated 20.02.2002, made in M.C.O.P. No.100 of 2010, the appellant has come out with C.M.A.No.1450 of 2011.

12.The learned counsel appearing for the appellant in C.M.A.Nos.1449, 1451 & 1452 of 2011 contended that the Tribunal ought to have considered that the appellants claimed nominal amount as compensation for the injuries sustained in the accident. The appellants have produced documents to prove the treatment taken for the injuries sustained by them in the



accident. The Tribunal passed award rejecting the claims on surmises. The learned counsel appearing for the appellant contended that in C.M.A.No.1450 of 2011, the Tribunal has awarded only a sum of Rs.8,000/- as compensation, whereas the appellant lost teeth and has taken treatment for one month in C.M.C. Hospital, Vellore. The appellant has also examined P.W.10 - Doctor to prove the loss of teeth and treatment taken by him for one month. The appellant in C.M.A.No.1451 of 2011 has taken treatment for disfigurement in the face. The Tribunal failed to see that the appellants have produced documents to show that they have purchased medicines for the treatment taken for the injuries. The Tribunal failed to see that the accident occurred was grave one and some of the co-passengers died and appellants and others have suffered injuries. In the FIR marked as Ex.P1, it has been stated that the appellants have suffered injuries due to the accident. The Tribunal failed to consider the same. The Tribunal failed to consider the oral and documentary evidence let in by the appellants and erroneously dismissed the three claim petitions in C.M.A.Nos.1449, 1451 and 1452 of 2011 and granted meagre amount of Rs.8,000/- as compensation in claim petition in C.M.A.No.1450 of 2011. Hence, prayed for setting aside the order of dismissal of claim petitions in C.M.A.Nos.1449, 1451 and 1452 of 2011 and for enhancement of the compensation granted in the claim petition in C.M.A.No.1450 of 2011.

13.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

14.The learned counsel appearing for the 3rd respondent-Insurance Company made submissions supporting the common award passed by the Tribunal and prayed for dismissal of the appeals.

15.Heard the learned counsel appearing for the appellant in all the appeals as well as the 3rd respondent and perused the materials available on record.

16.As far as C.M.A.No.1449 of 2011 is concerned, the appellant claimed compensation of Rs.40,000/- for the alleged injuries suffered in the accident. The appellant examined himself as P.W.3 and marked Exs.P14 to P17. The Tribunal considered all the documents and evidence let in by the appellant. From the award of the Tribunal, it is seen that Ex.P14-O.P. Chit does not mention any injury and Ex.P15-petition filed for issue of wound certificate, which was returned by the Court. The appellant has not taken any steps to obtain the disability certificate to prove that he suffered any disability due to the injuries. Exs.P16 and P17 are the receipts



for having purchased the medicines. The Tribunal rejected the same as the said documents did not disclose that medicines were purchased for injuries sustained in the accident.

17.As far as C.M.A.No.1450 of 2011 is concerned, it is the contention of the appellant that he examined himself as P.W.4 and examined P.W.10 - Doctor to prove that he lost teeth and has taken treatment in C.M.C. Hospital, Vellore. The Tribunal considering the evidence of P.W.10 - Doctor and documents filed by the appellant, granted a total sum of Rs.8,000/- for the medical expenses and treatment taken.

18.As far as C.M.A.No.1451 of 2011 is concerned, it is the contention of the appellant that he suffered abrasion in jaw which disfigured his face and he also sustained injuries in the hand. The appellant except filing return petition filed for issue of wound certificate, has not filed any document to prove the nature of injuries sustained in the accident and treatment taken by him.

19.As far as C.M.A.No.1452 of 2011 is concerned, it is the contention of the appellant that he suffered injuries in his left eyebrow and filed Exs.P25 - O.P. Chit and P26- return petition. The Tribunal considered Ex.P25-O.P. Chit issued by the Tirunelveli Hospital wherein the name of the patient was corrected and patient's name was written as Srinivasan and the date of admission was mentioned as 12.08.1994, but the date of accident is 12.05.1994. Further, the appellant himself has admitted that in Ex.P25 there was no seal. The Tribunal considered Ex.P25 and rejected the same on the ground of correction of name, date and lack of seal. There is no error in rejecting Exs.P25 and P26.

20.The Tribunal dismissed the claim petitions viz., M.C.O.P.Nos.99, 105 and 107 of 2000 filed by the appellant in C.M.A.Nos.1449, 1451 and 1452 of 2011, by holding that the appellants have not proved that they suffered injuries in the accident and they took treatment for the same. The Tribunal has given cogent and valid reason for dismissing the three claim petitions. There is no reason to interfere with the finding of the Tribunal. As far as C.M.A.No.1450 of 2011 is concerned, the Tribunal has considered the evidence of P.W.10 - Doctor and awarded a sum of Rs.8,000/-, which is not meagre. The appellant has not made out any case for enhancement of the compensation.

21.In the result, all the appeals are dismissed and the amount of Rs.8,000/- awarded by the Tribunal together with interest at the rate of 9% per annum from the date of petition till the date of deposit in M.C.O.P.No.100 of 2000 is confirmed.



The 3rd respondent-Insurance Company is directed to deposit the award amount 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, to the credit of M.C.O.P. No.100 of 2000. On such deposit, the appellant in C.M.A.No.1450 of 2011 is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Subordinate Judge,
(Motor Accident Claims Tribunal),
Vellore.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1CC to Mr.C.Prabakaran, Advocate, Sr.No.35516/2020

C.M.A.Nos.1449 to 1452 of 2011

RLD (CO)
K.RK. (27.08.2021)