

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.896 of 2009

and

M.P.No.1 of 2009

J.A.Chander

... Appellant/Respondent

Vs.

Ashok Kumar

... Respondent/Claimant

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.09.2008 made in M.C.O.P.No.1235 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.2, Salem.

For Appellant : Mr.P.Jagadeesan

For Respondent : Mr.R.Nalliyappan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 06.09.2008 made in M.C.O.P.No.1235 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.2, Salem.

2.The appellant is the respondent in M.C.O.P.No.1235 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.2, Salem. The respondent filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.09.2003.

3.According to the respondent, on 08.09.2003 at about 04.00 P.M., while he was riding in his motorcycle bearing Registration No.TN 30 A 9640 on Venkatappa Chetty Road, before Bombay Biriyan Hotel, the driver of the Maruthi 800 car bearing Registration No.TN 27 B 0095 coming in the opposite direction,

drove the car in a rash and negligent manner and dashed against the respondent and caused the accident. In the accident, the respondent fell down from his motorcycle and sustained multiple grievous injuries all over his body. He was immediately taken to Sri Gokulam Hospital, Salem for treatment. At the time of accident, the respondent was aged 43 years and was doing Garlic Business and was earning a sum of Rs.10,000/- per month. Due to the injuries sustained by him in the accident, he was unable to do his work as he was doing earlier. Therefore, he filed the above said claim petition claiming a sum of Rs.5,00,000/- as compensation against the appellant, being the owner of the Maruthi 800 car.

4.The appellant, owner of the Maruthi 800 car filed counter statement and denied various averments made by the respondent. According to the appellant, his Maruthi 800 car was not involved in the accident. The respondent only drove his motorcycle in a rash and negligent manner and dashed against a bicycle and invited the accident. Since, the respondent cannot claim any compensation from the cyclist, he impleaded the appellant's vehicle to claim compensation. The driver of the appellant who was in the appellant's godown, which was situated near the place of alleged accident, immediately after the accident, took the respondent to the godown and informed his relatives through telephone call. Thereafter, the driver of the appellant took the respondent to his house and then to a Hospital for first aid treatment. The respondent was admitted by the driver of the appellant in Gokulam Hospital. But, the appellant's vehicle was wrongly impleaded in the present claim petition for claiming compensation. The Registration Number of the car of the appellant was found only in the F.I.R. and not in the A.R.copy. The appellant's car was not damaged and only the respondent's motorcycle was damaged heavily. This shows that the respondent himself sustained injuries of his own rash and negligent act and filed a false claim petition against the appellant in order to claim compensation. The respondent has to prove his age, avocation, income, nature of injuries, disability and period of treatment taken by producing valid documents. In any event, the quantum of compensation claimed by the respondent is highly excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the respondent examined himself as P.W.1 and Dr.Sridhar was examined as P.W.2 and thirteen documents were marked as Exs.P1 to P13. On behalf of the appellant, the driver of the car, who was an eyewitness to the accident was examined as R.W.1 and the appellant examined himself as R.W.2 and two documents were marked as Exs.R1 and R2.

6.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the appellant and directed the appellant, being the owner of the car to pay a sum of Rs.81,000/- as compensation to the respondent.

7.Challenging the said award dated 06.09.2008 made in M.C.O.P.No.1235 of 2004, the appellant has come out with the present appeal.

8.The learned counsel appearing for the appellant contended that the Tribunal failed to see that the vehicle belonging to the appellant was not involved in the accident, as alleged by the respondent. The respondent drove his motorcycle in a rash and negligent manner and dashed against a bicycle, fell down and sustained injuries. The respondent failed to prove that vehicle of the appellant was involved in the accident. The Tribunal failed to consider the evidence of R.W.1, the driver of the appellant's car, who categorically stated that the car was not involved in the accident. The Tribunal erred in totally discarding the evidence of R.W.1. The Tribunal failed to see that car was inspected by the Motor Vehicle Inspector only after 180 days from the date of accident which itself would prove that claim of the respondent is false. The Tribunal ought to have accepted the judgment of the Criminal Court, where R.W.1 was acquitted and dismissed the claim petition. Apart from respondent, no eyewitness was examined. The respondent failed to prove the disability suffered by him in the accident. In the absence of any evidence with regard to avocation and income of the respondent, the amount awarded by the Tribunal towards loss of income is excessive and prayed for setting aside the award passed by the Tribunal.

9.Per contra, the learned counsel appearing for the respondent made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellant as well as the respondent and perused the entire materials on record.

11.It is the contention of the respondent that R.W.1, driver of the car belonging to the appellant drove the car in a rash and negligent manner and dashed against the motorcycle in which the respondent was riding and caused the accident. To substantiate this contention, the respondent examined himself as P.W.1 and marked F.I.R. as Ex.P1 and Charge Sheet as Ex.P2,

which are against R.W.1, the driver of the car belonging to the appellant. In addition to that the respondent has marked copy of Accident Register issued by Gokulam Hospital, Salem as Ex.P3 wherein it is stated that the respondent was admitted immediately after the accident. In the Accident Register, it has been mentioned that the respondent sustained injuries in the road traffic accident involving motorcycle and car. On the other hand, it is the contention of the appellant that Maruthi 800 car belonging to the appellant was not involved in the accident and the respondent rode his motorcycle in a rash and negligent manner and dashed on the bicycle and fell down and sustained injuries. The driver of the car belonging to the appellant helped the respondent to inform his relatives and admitted the respondent in Gokulam Hospital, Salem. To substantiate the contention of the appellant, he examined the driver of his car as R.W.1 and marked the judgment of the Criminal Court, where R.W.1 was acquitted. The Tribunal considered the judgment rendered by the Criminal Court which was marked as Ex.R1 and found that R.W.1 was acquitted as two eyewitnesses turned hostile and judgment of the Criminal Court is not binding on the Tribunal.

12.The contents of the F.I.R. is the not the conclusive proof of negligence. At the same time, it may be taken into consideration along with other evidence let in before the Tribunal to fix the negligence. In the present case, the respondent examined himself as P.W.1 and deposed as to how the accident has occurred. The Tribunal also took note of the fact that the respondent was examined as 5th prosecution witness and deposed as stated in the claim petition and evidenced before the Motor Accident Claims Tribunal.

13.From the award of the Tribunal, it is seen that in the Accident Register issued by the Gokulam Hospital, Salem, which was registered immediately after the accident, it was stated that the respondent suffered injuries in a road traffic accident involving motorcycle and car. It is the case of the appellant that his driver, with a view to help the respondent, admitted him in the hospital. Even in the Accident Register, it was mentioned only as road traffic accident involving motorcycle and car. The driver of the appellant, as R.W.1 has not denied the averments in the Accident Register. The statement was taken from the respondent by the Police in Gokulam Hospital, Salem and F.I.R. was registered. Considering all the above materials, the Tribunal has held that the accident has occurred only due to rash and negligent driving by the driver of the car belonging to the appellant. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.As far as quantum of compensation is concerned, the Tribunal considering the materials on record, nature of injuries, period of treatment taken, evidence of P.W.2/Doctor and documents filed by the respondent, has awarded a sum of Rs.81,000/- as compensation to the respondent under different heads, which are not excessive warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.81,000/- awarded by the Tribunal as compensation to the respondent, along with interest and costs is confirmed. The appellant is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1235 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.2, Salem. On such deposit, the respondent 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. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS I)

/true copy/

Sub Asst. Registrar

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To

- 1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.2,
Salem.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.896 of 2009

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