

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.151 of 2015
and
M.P.No.1 of 2015

The United India Insurance Co., Ltd.,
No.146-N, Kumar Complex,
Thiruchengode Post & Town, Namakkal District. .. Appellant

Vs.

1.Selvaraj
2.S.Mohan ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.09.2013 made in M.C.O.P.No.14 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Rasipuram.

For Appellant : Mrs.Sree Vidhya

For R1 and R2 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 11.09.2013 made in M.C.O.P.No.14 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Rasipuram.

2.The appellant is the 2nd respondent in M.C.O.P.No.14 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Rasipuram. The first 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 15.11.2009.

3.According to the 1st respondent, while the 1st respondent was riding in his bicycle on Thiruchengode to Rasipuram Main road, near Pillanallur Lakshmi Narayana Theatre, the driver of

the bus bearing Registration No.TN-34-B-8586 drove the bus without observing the traffic rules in a rash and negligent manner and dashed behind the 1st respondent. Due to the accident, the 1st respondent sustained grievous injuries. The 2nd respondent is the owner and the appellant is the insurer of the bus. Therefore, the 1st respondent has filed the above claim petition claiming compensation.

4.The 2nd respondent remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the accident occurred solely due to rash and negligent driving by the 1st respondent and the alleged accident is also denied by the 2nd respondent. The 2nd respondent has to prove that he had valid driving license at the time of accident and the bus was insured with the appellant/Insurance Company.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.Ravi was examined as P.W.2 and marked nine documents as Exs.P1 to P9. On the side of the 2nd respondent, one Sundararajan was examined as R.W.1 and Subramanian was examined as R.W.2 and marked nine documents as Exs.R1 to R9.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the bus belonging to the second respondent and directed the appellant-Insurance Company to pay a sum of Rs.97,750/- as compensation to the first respondent/claimant.

8.Challenging the compensation granted by the award dated 11.09.2013 made in M.C.O.P.No.14 of 2010, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that according to the first respondent, the alleged accident had occurred on 15.11.2009. But the complaint was lodged before the police only on 23.11.2009. If really, the accident had occurred as alleged by the first respondent, the complaint would have been given to the police immediately. The police, after thorough investigation had closed the case as mistake of fact. The Tribunal erred in fixing the negligence on the part of the driver of the bus solely relying on interested evidence of the first respondent. The first respondent has suffered only minor injuries and the compensation awarded to the first respondent, is excessive and prayed for setting aside the award of the Tribunal.

10.Though notice has been served on the respondents 1 and 2

and their names are printed in the cause list, there is no representation for them either in person or through counsel.

11. Heard the learned counsel appearing for the appellant and perused all the materials available on record.

12. It is the case of the first respondent that while he was riding in his bicycle, the driver of the bus belonging to the second respondent drove the same in a rash and negligent manner and dashed against him and caused the accident and hence he filed the claim petition claiming compensation for the injuries sustained by him in the accident. The first respondent examined himself as P.W.1 and deposed in the same line as mentioned in the claim petition. The first respondent also examined P.W.2/Doctor with regard to the nature of injuries, treatment taken, percentage of disability. On the other hand, it is the case of the appellant that the accident did not occur due to rash and negligent driving on the part of the driver of the bus. The learned counsel for the appellant contended that the complaint given by the first respondent was closed as mistake of fact. The Tribunal considering the above contention of the first respondent and contents of FIR, rejected the contention of the appellant and held that the driver of the bus alone was responsible for the accident. It is well settled that the contents of FIR or Criminal proceedings, are not conclusive proof to fix the negligence by the Tribunal. The Tribunal has to appreciate the evidence let in before it to conclude and to fix the negligence. In the present case, the first respondent, who is the victim/eyewitness deposed that the driver of the bus drove the bus in a rash and negligent manner and dashed him from behind. To disprove the said evidence, the appellant had not examined the driver of the bus or any independent eyewitness. The Tribunal has appreciated these materials in proper perspective and held that the accident had occurred only due to the rash and negligent driving by the driver of the bus and directed the appellant/Insurance Company to pay compensation. There is no error in the said finding of the Tribunal, warranting interference by this Court and the same deserves to be confirmed.

13. Since the appellant/Insurance Company has not disputed the quantum of compensation awarded by the Claims Tribunal, the same is hereby confirmed as such.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal as compensation to the first respondent/claimant is hereby confirmed. The appellant-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.14 of 2010. On such deposit, the first respondent/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Rasipuram.

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

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 885

C.M.A.No.151 of 2015
and
M.P.No.1 of 2015

RLD(CO)
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