

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1976 of 2012
and M.P. No. 1 of 2012

The Divisional Manager,
The New India Assurance Co. Ltd.,
Tiruvannamalai District,
Tamil Nadu. Appellant/2nd Respondent

Vs.

1.Ramalingam1st Respondent/Petitioner
2.Paramjit Singh2nd Respondent/Ist Respondent
3.The Divisional Manager,
Oriental Insurance Co. Ltd.,
No.1, Katpadi Road,
Vellore 632 004. 3rd Respondent/3rd Respondent
(R2 was set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 21.02.2012, made in M.C.O.P. No. 72 of 2006, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tirupattur.

For Appellant : Ms. A. Salomi

For Respondents: Mr. F. Terry Chellaraja (For R1)

Mr. K. Vinod

for M/s. Elveera Ravindran
(For R3)

R2 : Ex Parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 21.02.2012, made in M.C.O.P. No. 72 of 2006, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tirupattur.

2.The appellant is the 2nd respondent in M.C.O.P. No. 72 of 2006, on the file of the Sub Court, (Motor Accident Claims

Tribunal), Tirupattur. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him and for the damages caused to the Vehicle, in the accident that took place on 09.07.2005.

3. According to the 1st respondent, on the date of accident viz., 09.07.2005, when he was driving his Lorry bearing Registration No. KA-01-449 in normal speed with Venkatesan as 2nd Driver and Kumar as Cleaner, in the National Highways No.9, Village Havre Ta, Mohol, near Hotel Cottage Kunder at Western side, the Driver of the Truck bearing Registration No. MH-10A-9847 belonging to the 2nd respondent drove the vehicle in a rash and negligent manner and dashed against the Lorry driven by the 1st respondent and caused the accident. In the accident, the 1st respondent sustained grievous injuries and the Lorry driven by him got damaged and hence, filed the claim petition, claiming compensation for the injuries as well as for the damages caused to the lorry, from the 2nd respondent and appellant, as owner and insurer of the Truck bearing Registration No. MH-10A-9847 respectively and 3rd respondent, as insurer of the Lorry bearing Registration No. KA-01-449.

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

5. The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the accident occurred due to unauthorized driving of the Truck bearing Registration No. MH-10-A-9847 by the accused Sachin Prabhakar Bhosale under the influence of alcohol, without the consent and knowledge of the 2nd respondent's driver viz., Sunil Digamber Yadav, in an unauthorized manner. Such a driving of the Truck amounts to theft. The said Sachin Prabhakar Bhosale was not working under the 2nd respondent. Hence, the appellant is not liable to pay compensation to the 1st respondent. The appellant denied the manner of accident, avocation, income, period of medical treatment and disability suffered by the 1st respondent. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. The 3rd respondent filed counter statement and denied all the averments made in the claim petition by the 1st respondent. According to the 3rd respondent, accident occurred due to rash and negligent driving by the driver of the 2nd respondent Truck bearing Registration No. MH-10-A-9847. The 1st respondent ought to prove the injuries suffered and period of treatment taken to claim compensation. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked 15 documents as Exs.P1 to P15. The appellant examined 2 witnesses as R.W.1 and R.W.2 and marked 1 document as Ex.R1.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Truck bearing Registration No. MH-10-A-9847 belonging to the 2nd respondent and directed the appellant as insurer of the vehicle to pay a sum of Rs.3,59,553/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent. The Tribunal dismissed the claim petition as against the 3rd respondent.

9. Against the said award dated 21.02.2012, made in M.C.O.P. No. 72 of 2006, the appellant-Insurance Company has come out with the present appeal.

10. Learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to see that Sachin Prabhakar Bhosale who was driving the offending Truck was not authorized Driver of the 2nd respondent. Without knowledge and permission of the authorized Driver of the Truck, the said Sachin Prabhakar Bhosale under the influence of alcohol drove the vehicle and caused the accident. The appellant has proved the same by examining R.W.1 and marking Ex.R1 - report of the Inspector. At the time of accident, Sachin Prabhakar Bhosale did not possess driving license and violated the policy and permit condition. Hence, the appellant is not liable to pay compensation. The Tribunal ought to have exonerated the appellant and directed the 2nd respondent, owner of the vehicle to pay the compensation. The learned counsel appearing for the appellant further contended that the Tribunal erred in awarding compensation of Rs.67,300/- for personal injury and a sum of Rs.2,92,253/- for the expenses incurred for transmitting the vehicle and carrying out the repairs for the damages caused to the offending Lorry. The compensation granted by the Tribunal under different heads are excessive. The 1st respondent has not produced registration certificate of the Lorry to prove that he was owner of the Lorry. The 1st respondent has not produced any estimate for repairing the Lorry and Tribunal erroneously granted compensation relying on Exs.P10 to P12, which are manipulated documents. The Tribunal erred in fixing the burden on the appellant to prove that there was no damage to the Lorry, when the 1st respondent failed to prove the damages to Lorry and prayed for setting aside the award of the Tribunal.

11.Mr. F. Terry Chella Raja, learned counsel appearing for the 1st respondent made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

12.Learned counsel appearing for the 3rd respondent made submissions in support of the award passed by the Tribunal in which the claim petition was dismissed as against the 3rd respondent and prayed for dismissal of the appeal.

13.Heard learned counsel appearing for the appellant-Insurance Company, 1st respondent as well as the 3rd respondent and perused the materials available on record.

14.From the materials on record, it is seen that it is the contention of the 1st respondent that when he was driving the Lorry bearing Registration No. KA-01-449 owned by him, the driver of the Truck bearing Registration No. MH-10A-9847, belonging to the 2nd respondent drove the Truck in a rash and negligent manner and dashed on the backside of the Lorry bearing Registration No. KA-01-449, driven by the 1st respondent. Due to the same, the 1st respondent lost control and dashed on the road side tree and fell into a 20 feet pit. The 1st respondent, spare Driver Venkatesan and Cleaner Kumar sustained grievous injuries and Lorry was severely damaged. To substantiate the said contention, the 1st respondent examined himself as P.W.1 and marked FIR as Ex.P1, which was in Marati language and also marked English translation copy of the FIR as Ex.P2, which was registered against the driver of the Truck bearing Registration No. MH-10A-9847, belonging to the 2nd respondent.

15.On the other hand, it is the contention of the appellant that Sachin Prabhakar Bhosale driver of the offending Truck, without permission and knowledge of authorized driver, took the Truck and drove the same under the influence of alcohol and caused the accident and hence, appellant is not liable to pay compensation to the 1st respondent and for the damages caused to the Lorry. To substantiate the said contention, the appellant examined R.W.1, an Official of the appellant and marked Ex.R1, Investigation Report. The appellant has not furnished the details as to whom the investigator examined and no statements from the witnesses were filed. The appellant did not examine the 2nd respondent as owner of the offending Truck or the said Sunil Digamber Yadav, the alleged authorized driver. The Tribunal considering the failure on the part of the appellant to examine the above two persons, rejected the evidence of R.W.1, Ex.R1 and considering the evidence of 1st respondent as P.W.1 and Exs.P1 and P2, held that the accident has occurred only due to rash and

negligent driving by the driver of the Truck bearing Registration No. MH-10A-9847 and the 2nd respondent as owner of the Truck and appellant as insurer of the Truck are liable to pay the compensation. The Tribunal considering the fact that the driver of the Truck bearing Registration No. MH-10A-9847 was not possessing driving license at the time of accident, directed the appellant to pay the compensation at the first instance and recover the same from the 2nd respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

16.As far as the quantum of compensation is concerned, the 1st respondent marked Exs.P3 and P4 - wound certificates. The Tribunal considering the same, found that the 1st respondent suffered fracture in Tibia and Fibula bones and granted a sum of Rs.30,000/- for injuries and a sum of Rs.37,300/- under different heads. The amounts awarded by the Tribunal for injuries are not excessive, warranting interference by this Court.

17.As far as the quantum of compensation granted towards damages to Lorry is concerned, it is not in dispute that the Lorry bearing Registration No. KA-01-449 driven by the 1st respondent was involved in the accident and due to rash and negligent driving by the driver of the Truck bearing Registration No. MH-10A-9847, belonging to the 2nd respondent, the Lorry bearing Registration No. KA-01-449 got damaged in the accident. The 1st respondent has produced Exs.P7 to P12 to prove that the Lorry was brought from the place of accident to Vaniyambadi, after taking the Lorry from the pit using a Crane. The Tribunal considering each and every bill produced by the 1st respondent, rejected some of the bills. From the award of the Tribunal, it is seen that the Tribunal only after proper appreciation of the bills produced by the 1st respondent, has granted amounts for repairing the damages of the Lorry, Crane charges and charges for transmitting the Lorry from the accident place to Vaniyambadi. The appellant, except stating that Exs.P10 to P12 are manipulated, has not produced any materials to substantiate the same or to prove that the amounts claimed and awarded by the Tribunal are excessive. It is the further contention of the appellant that the 1st respondent failed to prove that he was owner of the Lorry bearing Registration No. KA-01-449 at the time of accident. The appellant has not taken such a stand in the counter statement and appellant has not examined any official from the RTO to prove that the Lorry belongs to some other 3rd party and it does not belong to the 1st respondent. Considering the entire materials on record, this Court is of the considered view that the Tribunal has considered all the materials in proper perspective and awarded compensation by giving cogent and valid reason.

18.For the above reason, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.3,59,553/- along with interest and costs is confirmed. The appellant is directed to deposit the award amount along with interest and costs, 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. 72 of 2006 at the first instance and recover the same from the 2nd respondent. On such deposit, the 1st 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. This appeal is dismissed as against the 3rd respondent. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Tirupattur.

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

+lcc to Mrs.Elveera Ravindran, Advocate sr.24264

+lcc to Mr.C.Ramesh Babu, Advocate Sr.24391

+lcc to M/s.M.Malar, Advocate Sr.24400

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and M.P. No. 1 of 2012

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