

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2137 OF 2015

Manikandan

.. Appellant/Petitioner

Vs.

G. Rajendran (died)

1. United India Insurance Co. Ltd.,
C/o.Motor Third Party Claims Officers,
No.38, Anna Salai,
Chennai 600 002.

2. Sekar

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 02.09.2014, made in M.C.O.P. No. 130 of 1995, on the file of the III Additional District Court, (Motor Accident Claims Tribunal), Poonamallee.

For Appellant : Mr.T.G.Balachandran

For Respondents: Ms.I.Malar (for R1)
No appearance (For R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 02.09.2014, made in M.C.O.P. No. 130 of 1995, on the file of the III Additional District Court, (Motor Accident Claims Tribunal), Poonamallee.

2.The appellant is claimant in M.C.O.P. No. 130 of 1995, on the file of the III Additional District Court, (Motor Accident Claims Tribunal), Poonamallee. He filed the said claim petition, claiming a sum of Rs.70,000/- as compensation for the injuries sustained by him in the accident that took place on 20.11.1994.

3.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 Lorry belonging to the deceased G.Rajendran and directed the 2nd respondent, as owner of the Lorry and son of the deceased G.Rajendran, to pay a sum of Rs.65,000/- to the appellant and dismissed the claim petition as against the 1st respondent-Insurance Company.

4.Challenging the portion of the award dismissing the 1st respondent-Insurance Company and not being satisfied with the amounts awarded by the Tribunal by the award dated 02.09.2014, made in M.C.O.P.No.130 of 1995, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the appellant has given policy number in the claim petition. Once policy number is given, it is the duty of the 1st respondent/insurer of the Lorry to verify and produce the same before the Court. The evidence of R.W.1, official of the 1st respondent-Insurance Company is not convincing and the Tribunal ought to have rejected the same. The burden is on the 1st respondent and the Tribunal erred in shifting the burden of proof on the appellant. The award of Rs.65,000/- is meagre and prayed for setting aside the portion of the award dismissing the claim petition as against the 1st respondent and for enhancement of the compensation.

6.Heard the learned counsel appearing for the appellant as well as well as the 1st respondent and perused the materials available on record. Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

7.It is the contention of the learned counsel appearing for the appellant that the appellant has furnished the policy number in the claim petition and the 1st respondent ought to have verified the same and produced the policy before the Tribunal. The appellant has filed copy of the claim petition in the typed set of papers. In column no.16 of the claim petition, the appellant has mentioned only the name of the 1st respondent and has not furnished the policy number either in that column or anywhere in the claim petition. In addition to that, the appellant has not produced Motor Vehicle Inspector's Report, which would have shown whether the Lorry in question had insurance at the time of accident or not. The appellant failed to furnish the policy number and copy of the policy. The Tribunal considering the materials on record, as well as the evidence of R.W.1, has rightly held that the 1st respondent-Insurance Company is not liable to pay the compensation and dismissed the claim petition against the 1st respondent and directed the 2nd respondent, owner of the Lorry, to pay the

compensation. There is no error in the said award of the Tribunal warranting interference by this Court.

8.As far as the quantum of compensation is concerned, the Tribunal considering the nature of injuries and treatment taken by the appellant, has awarded compensation to the appellant, which are not meagre and hence, the same are confirmed.

9.In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.65,000/- along with interest and costs is confirmed. The 2nd respondent is directed to deposit the award amount, along with interest and costs, 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.130 of 1995. On such deposit, the appellant/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The III Additional District Judge,
(Motor Accident Claims Tribunal),
Poonamallee.

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

+1cc to Ms.I.Malar, Advocate, S.R.No.8926

C.M.A.No.2137 of 2015

LN(CO)
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