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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2854 of 2011

(Through Video Conferencing)

R.Purushothaman
S/o. Raji Chettiar

...Appellant/Petitioner

Vs.

1. D.Chandran

2. The Oriental Insurance Company Limited,
Divisional Office,
No.11/3, C.V.Naidu Street,
1st Floor, Opp. to Babu Theatre,
Thiruvallur.

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.11.2009 made in M.C.O.P.No.212 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Chengalpattu.

For appellant : Mr.Sivakumar
for Mr.V.Jagannathan

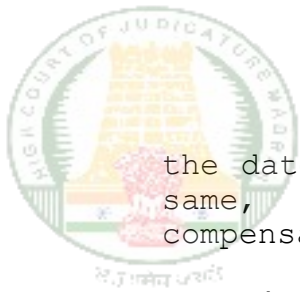
For 2nd respondent : Mr.K.Vinod

J U D G M E N T

With the consent of the learned counsel for the appellant/claimant and the 2nd respondent Insurance Company, this Civil Miscellaneous Appeal is taken up for final disposal. The 1st respondent has remained exparte before the Tribunal.

2. This Civil Miscellaneous Appeal has been filed by the appellant, who was the claimant before the Tribunal, against the impugned Judgment and Decree dated 11.11.2009 passed by the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Chengalpattu, in M.C.O.P.No.212 of 2007.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.40,000/- as compensation together with interest at 7.5% p.a from the date of the claim petition till



the date of deposit, to the appellant/claimant. Aggrieved by the same, claimant came with this appeal for enhancement of compensation.

4. The case of the appellant/claimant is that the appellant/claimant suffered grievous injuries in a motor accident. The accident is said to have taken place on 16.09.1998 at about 7.15 p.m, on E.C.R. Road, near Koovathur, Voyalur Village limit, while the deceased travelling as a pillion rider in a motorcycle bearing registration No.TN-21-U-7776 belonging to the 1st respondent insured with the 2nd respondent Insurance Company, the driver of the motorcycle drove the it in rash and negligent manner and dashed the right side of a lorry bearing registration No. TN-01-B-0387. As a result of the accident, the appellant/claimant suffered grievous injuries. Therefore, the appellant/claimant filed a claim petition. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation and has allowed the appellant to recover the amount from the 1st respondent owner of the vehicle.

5. I have considered the arguments advanced by the learned counsel for the appellant/claimant and the 2nd respondent Insurance Company. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

6. Though these facts were narrated in the claim petition, the appellant had not taken any steps to implead the owner of the lorry bearing registration No. TN-01-B-0387 and its insurer. Instead, he filed the case only against the owner of the motorcycle and the insurer of the said motorcycle, on which the appellant was apparently ridding as a pillion rider at the time of the accident. The Tribunal has found that the driver of the motorcycle belonging to the 1st respondent was guilty of negligent riding and has awarded a sum of Rs.40,000/- as compensation payable by the 1st respondent.

7. Since the appellant was unable to prove the existence of valid policy, the appellant has been permitted to proceed against the 1st respondent owner of the motorcycle. The 1st respondent had remained exparte not only before the Tribunal but also before this Court.

8. It is further submitted that though the accident is said to have taken place in the year 1998, the claim petition was filed by the appellant claimant before the Tribunal on 28.02.2005. The claim petition was originally filed before the Principal Sessions Court, Chengalpattu as M.C.O.P.No.80 of 2005 and thereafter, the claim petition was transferred to Additional Subordinate Court and renumbered as M.C.O.P.No.48 of 2005 and finally transferred to the Motor Accident Claims Tribunal cum



Chief Judicial Magistrate Court, Chengalpattu, and again renumbered as M.C.O.P.No.212 of 2007.

9. The 2nd respondent has also denied the existence of insurance policy though it would be contended by the learned counsel for the appellant that the motorcycle bearing registration TN-21-U-7776 had valid insurance cover at the time of accident from the 2nd respondent Insurance Company. Since the claim petition was not filed at an earlier point of time, it raises serious doubts as to whether the claim petition was bonafide or not.

10. I find no merits in this Civil Miscellaneous Appeal to interfere with the impugned Judgment and Decree. Therefore, this appeal is liable to be dismissed. In any event, the Tribunal has partially allowed the claim petition and has awarded an amount of compensation of Rs.40,000/- to the appellant/claimant. Therefore, it is open for the appellant to execute the award against the 1st respondent, whose vehicle was involved in the accident when the appellant/claimant was travelling as a pillion rider.

11. Accordingly, the impugned Judgment passed by the Tribunal is confirmed and this Civil Miscellaneous Appeal is dismissed with the above observations. No cost.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

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To:-

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Chengalpattu.

Copy To:

The Section Officer,
V.R. Section, High Court, Chennai-104.

+1cc to Mr.V.Jagannathan, Advocate SR.No.25445

C.M.A.No.2854 of 2011

PP(CO)
BE(10/08/2021)