

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2096 of 2013

A. Muthuvel

.. Appellant /Petitioner

Vs.

1.C. Balasubramanian

2.The ICICI Lombard Insurance Co. Ltd.,
No. 84/85, Arihant Building, 1st Floor,
Waltax Road, Chennai 600 003. .. Respondents/Respondents
and now Insurance company having their officer at
chotabai centre-II, Floor Legal Dept,
No.140, Nungambakkam High Road, Chennai-34.
[1st respondent set exparte before the Tribunal.]

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of Motor Vehicles Act, 1988, against the order and decree
dated 10.09.2012, made in M.C.O.P. No. 350 of 2009, on the
file of the Sub Court, (Motor Accident Claims Tribunal),
Tiruvallur.

For Appellant : Mr. Amar D. Pandiya
for Mr. P. Natarajan

For Respondents : M/s. R. Sree Vidhya (for R2)

J U D G M E N T

This appeal has been filed challenging the dismissal of
the claim petition by the order dated 10.09.2012, made in
M.C.O.P. No. 350 of 2009, on the file of the Sub Court, (Motor
Accident Claims Tribunal), Tiruvallur.

2.The appellant-claimant filed M.C.O.P. No. 350 of 2009,
on the file of the Sub Court, (Motor Accident Claims
Tribunal), Tiruvallur, claiming a sum of Rs.2,00,000/- as
compensation for the injuries sustained by him in the accident
that took place on 06.01.2008.

3.According to the appellant, on the date of accident,

viz., 06.01.2008, while the appellant was travelling in the Car bearing Registration No. TN-07-AF-3924, belonging to the 1st respondent in Tiruttani-Thiruvallur road, the driver of the Car drove the same in a rash and negligent manner endangering the safety of the passengers, without following road traffic rules and while turning in Arcotkuppam Village, hit against the TNSTC Bus and caused the accident. In the accident, the appellant suffered multiple and grievous injuries. The accident has occurred only due to rash and negligent driving by the driver of the Car belonging to the 1st respondent and hence, filed the present claim petition, claiming compensation against the respondents 1 and 2, who are the owner and insurer of the said Car respectively.

4.The 1st respondent remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant in the claim petition. According to the 2nd respondent-Insurance Company, the accident occurred due to rash and negligent driving by the driver of the TNSTC Bus, without noticing the 1st respondent's vehicle. The driver of the Car drove the vehicle in a careful manner, following the traffic rules. The driver of the Car did not possess valid driving licence at the time of the accident and hence, the 2nd respondent is not liable to pay any compensation. In any event, the 2nd respondent denies the age, avocation and income of the appellant and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1 and examined one Dr. Thiyagarajan as P.W.2 and marked 10 documents as Exs.P1 to P10. No oral and documentary evidence was let in on the side of the respondents.

7.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition, holding that the appellant failed to establish the negligence on the part of the driver of the Car belonging to the 1st respondent.

8.Challenging the dismissal of the claim petition by the order dated 10.09.2012, made in M.C.O.P. No. 350 of 2009, the appellant has come out with the present appeal.

9.Learned counsel appearing for the appellant contended that the Tribunal erred in not considering the evidence of P.W.1, P.W.2 and the documents filed by the appellant. The Tribunal erroneously relying on the contents of the FIR, dismissed the claim petition, holding that the appellant failed to prove the negligence on the part of the driver of the Car. The appellant as P.W.1, pleaded in the claim petition that the accident has occurred only due to rash and negligent

driving by the driver of the Car belonging to the 1st respondent and deposed to that effect. In the FIR it has been mentioned that the driver of the Car dashed against the Bus belonging to the Tamil Nadu Transport Corporation, which itself reveals that the accident has occurred only due to rash and negligent driving by the driver of the Car and prayed for setting aside the award of the Tribunal dismissing the claim petition and for granting compensation by allowing the claim petition.

10. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal on a perusal of the FIR marked as Ex.P8, wherein it has not been mentioned that the driver of the Car belonging to the 1st respondent was negligent, found that there is contradiction in the FIR and rightly dismissed the claim petition, on the ground that the appellant has failed to prove the negligence on the part of the driver of the Car belonging to the 1st respondent and prayed for dismissal of the appeal.

11. Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

12. From the materials on record, it is seen that it is the contention of the appellant that while he was travelling in the Car along with the 1st respondent and others, the driver of the Car drove the vehicle in a rash and negligent manner, dashed against the Tamil Nadu State Transport Corporation Bus and caused the accident. Due to the same, the appellant suffered injuries. To substantiate the same, he examined himself as P.W.1 and deposed to that effect. He is an eye-witness, as he travelled in the Car. The 1st respondent remained exparte before the Tribunal. The 2nd respondent did not let in any evidence to disprove the contention of the appellant. The Tribunal has not considered the contents of the appellant and his evidence and dismissed the claim petition, relying on the contents of the FIR, holding that the appellant failed to prove the negligence on the part of the driver of the Car. Based on the contents of the FIR, the negligence cannot be fixed. The Tribunal has not considered the oral and documentary evidence let in before it to decide the negligence. In the present case, the appellant examined himself as P.W.1 and deposed that the accident has occurred only due to rash and negligent driving by the driver of the Car. The Tribunal has not considered the pleadings and evidence of appellant. For the above reason, the finding of the Tribunal is set aside. The 2nd respondent-Insurance Company has not denied that the insurance policy was in force for the car at the time of accident. In view of the same, the 2nd respondent-Insurance Company is directed to pay the compensation now awarded by this Court to the appellant.

13.As far as the quantum of compensation is concerned, the appellant contended that he suffered fracture of tibial bone and to prove the same, he examined P.W.2- Doctor and filed Exs.P1 to P7, P9 and P10, relating to the injuries, treatment taken and disability assessed. P.W.2- Doctor assessed that due to the injuries suffered, the appellant sustained 55% disability. To prove the nature of injuries and disability suffered, the appellant examined P.W.2 - Doctor, who denied the suggestion that there is possibility of reducing the disability by doing physiotherapy and he also deposed that he has examined the appellant after 4 years and 6 months of the accident and he is not aware of the treatment taken by the appellant. The 2nd respondent has not let in any contra evidence to disprove the evidence of P.W.2 - Doctor. Considering the evidence of P.W.2- Doctor, it is seen that the percentage of disability assessed by him is on the higher side and hence, the disability suffered by the appellant is fixed as 40% and a sum of Rs.80,000/- (Rs.2,000/- x 40%) is awarded towards disability. The learned counsel appearing for the appellant submitted that the appellant had spent a sum of Rs.7,500/- towards medical expenses and has produced Ex.P5 - Medical Bills. As per Ex.P1- Discharge Summary, the appellant has taken treatment in the Government General Hospital, Chennai, on 06.01.2008 and 07.01.2008. Considering the date of accident, the X-rays marked as Exs.P4 and P10 and Scan report marked as Ex.P7, this Court is inclined to award a sum of Rs.5,000/- towards medical expenses. Considering the period of treatment and the nature of injuries suffered by the appellant, this Court awards a sum of Rs.2,000/- towards attendant charges, Rs.2,000/- towards extra nourishment, Rs.5,000/- towards pain and suffering and Rs.5,000/- towards transportation.

14.The appellant claimed that he was working as a Automobile Engineer and was earning a sum of Rs.12,000/- to Rs.15,000/- per month. He has failed to substantiate the same. The accident is of the year 2008. Considering the date of accident, in the absence of any material evidence to prove the avocation and income, a sum of Rs.6,000/- per month is fixed as the notional income of the appellant. Due to the injuries suffered, he would not have worked atleast for a period of two months. Hence, a sum of Rs.12,000/- (Rs.6,000/- x 2 months) is awarded towards loss of income for two months. Thus, the compensation awarded to the appellant is as follows:

S. No	Description	Amount awarded by this Court (Rs)
1.	Disability	80,000/-
2.	Pain and suffering	5,000/-

3.	Extra nourishment	2,000/-
4.	Attendant charges	2,000/-
5.	Transport to Hospital	5,000/-
6.	Loss of income	12,000/-
7.	Medical expenses	5,000/-
	Total	1,11,000/-

15. In the result, the appeal is partly allowed and a sum of Rs.1,11,000/- is awarded to the appellant as compensation, along with 7.5% interest and costs. The 2nd respondent-Insurance Company is directed to deposit the award amount, now determined by this Court, 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. 350 of 2009. On such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs. The appellant is directed to pay the court fee, if any, on the award amount of Rs.1,11,000/-. No costs.

Sd/-
Assistant Registrar(ADI-MDU)

//True Copy//

Sub Assistant Registrar

gsa

To

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

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

+1cc to M/s.P.Natarajan, Advocate SR.18179
+1cc to M/s.R.Sreevidhya, Advocate SR.19365

C.M.A. No. 2096 of 2013

VSN-II (CO)
CB(17/09/2020)