

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.3524 of 2011

Sankar

.. Appellant/Claimant

Vs.

1.K. Tamilselvan

2.The Divisional Manager,
New India Insurance Company Limited,
CSI Complex, No.1, Officer's Line, Vellore.

3.M. Moorthy

4.The Divisional manager,
The Oriental Insurance Co. Ltd.,
Katpadi Road, Vellore. ... Respondents/Respondents

(R1 and R3 were set exparte before the Tribunal.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.08.2011, made in M.C.O.P. No.51 of 2008, on the file of the Additional District and Sessions Judge, Fast Track Court-II, (Motor Accident Claims Tribunal), Ranipet.

For Appellant : Mr.C.Prabakaran

For Respondents: Mr.R.Neethi Perumal (For R2)

No appearance (For R3)

Mr.S.Arun Kumar (For R4)

R1 : Exparte

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 25.08.2011, made in M.C.O.P. No.51 of 2008, on the file of the Additional District and Sessions Judge,

Fast Track Court- II, (Motor Accident Claims Tribunal), Ranipet.

2.The appellant filed M.C.O.P. No.51 of 2008, on the file of the Additional District and Sessions Judge, Fast Track Court-II, (Motor Accident Claims Tribunal), Ranipet, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.05.2006.

3.According to the appellant, on the date of accident, at about 14.30 hours, when he was traveling in a Lorry bearing Registration No. TN-23-AB-4135 belonging to the 1st respondent along with Mechanic Suresh @ Saravanan, for trial after repair, in Vellore to Tiruvannamalai main road, a Lorry bearing Registration No.TN-31-C-5573 belonging to the 3rd respondent, coming in opposite direction, driven by its driver, dashed against the Lorry in which the appellant was traveling and caused the accident. In the accident, the appellant sustained grievous injuries on his legs and all over the body. The respondents 1 and 3 as owners of both the Lorries and respondents 2 and 4 as insurers of the said vehicles are jointly and severally liable to pay compensation.

4.The respondents 1 and 3 remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant. According to the 2nd respondent, the appellant traveled as an unauthorized passenger in the Lorry bearing Registration No.TN-23-AB-4135 belonging to the 1st respondent at the time of accident. The accident occurred only due to rash and negligent driving by the driver of the Lorry bearing Registration No.TN-31-C-5573, who did not possess valid driving license to ply the vehicle. The appellant has to prove his age, avocation and income, injuries suffered and treatment taken to claim compensation. In any event, the total compensation claimed is excessive and prayed for dismissal of the claim petition.

6.The 4th respondent-Insurance Company filed separate counter statement and denied all the averments made by the appellant. According to the 4th respondent, the accident occurred only due to rash and negligent driving by the driver of the Lorry bearing Registration No.TN-23-AB-4135, who did not possess valid driving license to ply the vehicle at the time of accident. The appellant has to prove his age, avocation and income, injuries suffered and treatment taken to claim compensation. In any event, the total compensation claimed is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the appellant examined himself as P.W.1, examined one Doctor as P.W.2 and marked 6 documents as

Exs.P1 to P6. On behalf of the 2nd respondent, R.W.1 and R.W.2 were examined and 4 documents were marked as Exs.R1 to R4 and Ex.X1 was marked through R.W.2. No oral and documentary evidence was let in by the 4th respondent.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Lorry bearing Registration No.TN-23-AB-4135, belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.91,000/- as compensation to the appellant. The Tribunal dismissed the claim petition as against the respondents 2 to 5.

9.Against the said award dated 25.08.2011, made in M.C.O.P. No.51 of 2008, the appellant has come out with the present appeal.

10.The learned counsel appearing for the appellant contended that the Tribunal failed to see that the accident has occurred only due to rash and negligent driving by the driver of the Lorry bearing Registration No.TN-31-C-5573, belonging to the 2nd respondent and insured with the 4th respondent. At the time of accident, the appellant sustained grievous injuries. Taking advantage of the same, the driver of the 3rd respondent Lorry gave false complaint, as though the Lorry bearing Registration No.TN-23-AB-4135 belonging to the 1st respondent, driven by Suresh @ Saravanan, caused the accident. The Tribunal erred in fixing the entire negligence on the part of the driver of the Lorry belonging to the 1st respondent merely based on the FIR. The Tribunal erroneously exonerated the 2nd respondent-Insurance Company on the ground that the driver of the Lorry bearing Registration No.TN-23-AB-4135 was not possessing driving license at the time of accident. The Tribunal failed to consider Ex.P5 - copy of Motor Vehicle Inspector's Report, wherein it has been stated that both the Lorries were damaged in the accident. The Tribunal ought to have seen that the 2nd respondent failed to prove that driver of the Lorry did not possess driving license. In any event, the Tribunal ought to have ordered pay and recovery. The dismissal of the claim petition against the respondents 2 to 4 is not correct and is without any basis. The amounts awarded by the Tribunal for disability, transportation charges and extra nourishment are meagre and prayed for setting aside the award dismissing the claim petition as against the respondents 2 to 4 and for enhancement of the compensation.

11.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant traveled as unauthorized passenger in the Lorry bearing Registration No.TN-23-AB-4135. The appellant was not driving the Lorry. At the time of accident, one Suresh @ Saravanan was driving the Lorry without any license. The accident has occurred due to rash and negligent driving by the driver of the Lorry belonging to the 3rd respondent and insured with the 4th

respondent. The respondents 3 and 4 alone are liable to pay the compensation and prayed for dismissal of the appeal against the 2nd respondent. The learned counsel appearing for the 2nd respondent further submitted that the 2nd respondent proved their contention by examining R.W.2 that driver of the Lorry viz. Suresh @ Saravanan was not in possession of driving license at the time of accident. The Tribunal considered the same and rightly dismissed the claim petition against the 2nd respondent.

12. Though notice has been served on the 3rd respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

13. The learned counsel appearing for the 4th respondent-Insurance Company contended that the accident has occurred only due to rash and negligent driving by the driver of the Lorry bearing Registration No.TN-23-AB-4135. FIR was registered only against the driver of the said Lorry belonging to the 1st respondent. The Tribunal considering the materials placed before it, has rightly dismissed the claim petition against the respondents 3 and 4 and prayed for dismissal of the appeal against the respondents 3 and 4.

14. Heard learned counsel appearing for the appellant, 2nd respondent as well as the 4th respondent and perused the materials available on record.

15. It is the contention of the appellant that after repairing the Lorry Registration No.TN-23-AB-4135 belonging to the 1st respondent, while he was going on trial run along with mechanic Suresh @ Saravanan, the driver of the Lorry bearing Registration No.TN-31-C-5573, belonging to the 3rd respondent drove the same in a rash and negligent manner and dashed against the Lorry in which the appellant was traveling. To substantiate the said contention, the appellant examined himself as P.W.1 and deposed to that effect. According to 2nd respondent, the appellant was not driving the Lorry at the time of accident and he traveled as an unauthorized passenger. At the time of accident, the Lorry was driven by Mechanic Suresh @ Saravanan. The driver of the Lorry viz., Suresh @ Saravanan was not possessing driving license at the time of accident and accident has occurred only due to rash and negligent driving by the 3rd respondent and the 2nd respondent is not liable to pay any compensation. Similarly, it is the contention of the 4th respondent-Insurance Company that the accident has occurred due to rash and negligent driving by the driver of the Lorry bearing Registration No.TN-23-AB-4135 and relied on FIR which was registered against the driver of the lorry bearing Registration No.TN-23-AB-4135.

16.From the materials on record, it is seen that both the respondents 2 and 4 have not let in any evidence to substantiate their contention. The 2nd respondent has examined an Official from R.T.O. to show that said Suresh @ Saravanan did not possess driving license at the time of accident. Apart from the evidences of R.W.1 and R.W.2, the respondents have not let in any oral or documentary evidence. The Tribunal failed to consider the evidence of P.W.1 to decide the negligence properly. It is the contention of the appellant that the accident has occurred due to rash and negligent driving by the driver of the Lorry belonging to the 3rd respondent and filed Motor Vehicle Inspector's Report to show that both the vehicles are heavily damaged in the accident. The Tribunal without considering the Motor Vehicle Inspector's Report that both the Lorries were heavily damaged, erroneously held that evidence of the appellant as P.W.1 and Ex.P1 - FIR proved that accident occurred due to rash and negligent driving by the driver of the Lorry belonging to the 1st respondent.

17.It is pertinent to note that the accident has occurred in collusion between two Lorries and both the Lorries were damaged. Except evidence of the appellant as P.W.1, there is no evidence with regard to the manner of accident and who was negligent. Considering all the materials on record in its entirety, this Court is of the view that the drivers of both the Lorries belonging to the respondents 1 and 3 are equally negligent and responsible for accident and 50% negligence each is fixed on the drivers of both the Lorries belonging to the respondents 1 and 3. Hence, the award of the Tribunal dismissing the claim petition against the respondents 3 & 4 is set aside. The Tribunal dismissed the claim petition as against the 2nd respondent-Insurance Company on the ground that the driver of the Lorry belonging to the 1st respondent did not possess driving license. The Hon'ble Apex Court in the judgment reported in 23.09.2020 made in Civil Appeal Nos. 7220 & 7221 of 2011, [Bedi Ram Vs, Rajinder Kumar], held that when the driving license was not renewed within 30 days from the date of expiry and was renewed after the accident, that amounts to driver of the vehicle not possessing driving license. The Hon'ble Apex Court further held that in such circumstances, the Insurance Company is not liable to pay compensation.

18.In view of the ratio in the above judgment, the award of the Tribunal exonerating the 2nd respondent-Insurance Company is not interfered with and the same is confirmed. The award of the Tribunal is modified, directing the 1st respondent to pay 50% of the compensation and respondents 3 and 4 to jointly and severally pay 50% of the compensation to the appellant.

19.As far as the quantum of compensation is concerned, it is the contention of the appellant that he sustained 4 types of

injuries in his left eye, cheek, teeth, wrist and in his head and spine. The injuries in the head and eyes are grievous in nature. The appellant has taken treatment as in-patient at Government Vellore Medical College and Hospital from 19.05.2006 to 21.06.2006. The appellant examined himself as P.W.1 and examined P.W.2 - Doctor to prove the same. P.W.2 Doctor assessed and certified that the appellant suffered 25% disability and deposed to that effect. The Tribunal accepting the disability as 25%, granted a sum of Rs.37,000/- towards permanent disability at the rate of Rs.1,500/- per percentage. The accident is of the year 2006. The appellant is entitled to a sum of Rs.2,000/- per percentage for 25% disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.50,000/- [Rs.2,000/- x 25%]. The appellant contended that he was working as a Lorry driver and was earning a sum of Rs.6,000/- per month. The Tribunal accepted the same and granted a sum of Rs.18,000/- towards loss of income for a period of 3 months. Due to the injuries and disability suffered, the appellant would not have worked atleast for a period of 6 months. Hence, the appellant is entitled to a sum of Rs.36,000/- [Rs.6,000/- x 6 months] towards loss of income. Considering the nature of injuries and treatment taken, the amount of Rs.3,000/- each awarded by the Tribunal towards attendant charges, extra nourishment and loss of amenities are meagre and hence the same are enhanced to Rs.7,500/- each. The Tribunal has erroneously awarded a sum of Rs.3,000/- towards loss of estate and hence, the same is set aside. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	37,500/-	50,000/-	Enhanced
2.	Loss of income	18,000/-	36,000/-	Enhanced
3.	Pain and suffering	12,500/-	12,500/-	Confirmed
4.	Shock and mental agony	3,000/-	3,000/-	Confirmed
5.	Extra nourishment	3,000/-	7,500/-	Enhanced
6.	Attendant charges	3,000/-	7,500/-	Enhanced

7.	Medical expenses	3,000/-	3,000/-	Confirmed
8.	Loss of amenities	3,000/-	7,500/-	Enhanced
9.	Loss of estate	3,000/-	-	Set aside
10.		5,000/-	5,000/-	Confirmed
	Total	91,000/-	1,32,000/-	Enhanced by Rs.41,000/-

20. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.91,000/- is enhanced to Rs.1,32,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st respondent is directed to deposit 50% (Rs.66,000/-) of the enhanced award amount, now determined by this Court, along with interest and costs, less the amount if any already deposited, 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.51 of 2008 and the respondents 3 and 4 are jointly and severally directed to deposit 50% (Rs.66,000/-) of the enhanced 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.51 of 2008. On such deposit, the appellant is permitted to withdraw the enhanced award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.41,000/-. No costs.

Sd/-

Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

gsa

To

1. The Additional District and Sessions Judge,
Fast Track Court- II,
(Motor Accident Claims Tribunal),
Ranipet.

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

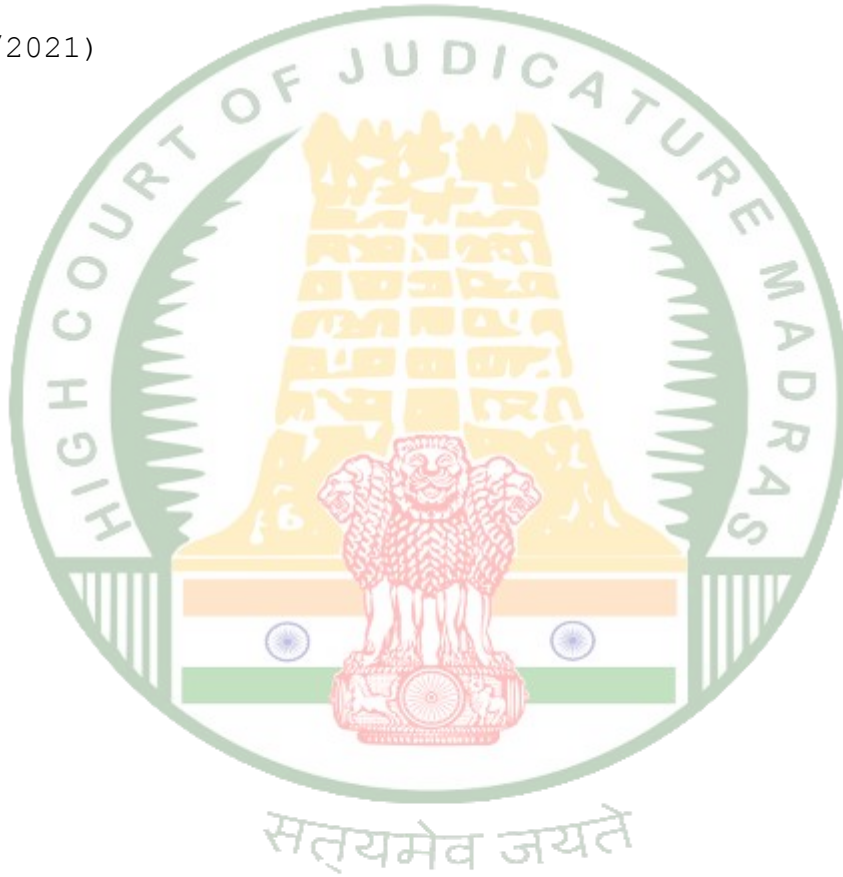
+1cc to Mr.S.Arun Kumar, Advocate SR.No.34617

+1cc to Mr.C.Prabakaran, Advocate SR.No.34483

+1cc to Mr.R.Neethi Perumal, Advocate SR.No.34516

C.M.A. No.3524 of 2011

SV (CO)
GMY (11/05/2021)



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