

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2380 of 2013

R.Selvaraj ... Appellant/Petitioner

Vs.

1. M.Balasubramani

2. United India Insurance Co., Ltd.,  
No.2, Dr.Sankaran Road,  
Namakkal District ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the decree and Award dated 17.04.2007 made in M.C.O.P.No.779 of 2003 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.C.Thangaraju  
for Mr.Ma.P.Thangavel

For R2 : Mrs.I.Malar

R1 - Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging Judgment and Award dated 17.04.2007 made in M.C.O.P.No.779 of 2003 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

2. It is the case of the appellant that on 08.09.2002 at 14.00 hrs at Kadamba Kurichi Road, while the appellant was walking on the extreme left of the road from south to north direction, at that time, a TVS Suzuki Motor Cycle bearing Reg.No.TN47/J-1607, which is owned by the 1st respondent, came from the east to west direction, driven by its driver in a rash and negligent manner without observing the road traffic rules and hit against the appellant and caused the accident. Due to the said accident, the appellant sustained severe grievous injuries all over his body including bone fracture at his left hand shoulder, left leg and head injury and permanent total

disablement. Immediately after the accident, the appellant was admitted as in-patient at C.M.Hospital, Namakkal and took treatment through surgeries and spent more than Rs.50.000/- towards medical and other expenses. The appellant was aged about 24 years at the time of accident and was working as a driver and was earning more than Rs.5,000/- per month. he was only the breadwinner of his family. The entire family of the appellant suffered heavily due to the accident and the appellant was permanently disabled. The 1st respondent is the owner and the 2nd respondent is the insurer of the said vehicle and hence both are liable to pay Rs.5,00,000/- as compensation.

3. The 2nd respondent / Insurance company had filed counter denying all the averments stated by the appellant. According to the 2nd respondent, the alleged accident had taken place on 08.09.2002 at 14.00 hrs, whereas, the FIR was given only on 10.09.2002 at 11.30 a.m., there is a delay of 2 days in filing the FIR and the same creates doubt about the accident. Further, the appellant is not entitled to claim interest at 12 % and hence seeks to dismiss the petition filed by the claimant.

4. The Tribunal considering the pleadings, counter pleadings and the submissions made on either side had dismissed the claim petition. Challenging the same, claiming compensation, the appellant / claimant is before this Court.

5. The learned counsel for the appellant contended that no independent witness have been examined, more particularly the investigator or filed alleged investigation report. Further, the FIR registered against driver of the offending vehicle and after investigation, the police authorities filed charge sheet against him and he pleaded guilty and paid the fine amount. The 2nd respondent has filed counter but nothing has been produced before the Tribunal to substantiate the same.

6. The learned counsel for the appellant submits that the Tribunal disbelieving the evidence of claimant stating that no occurrence had taken place on 08.09.2002, because there was no mention about the accident happened at Karur, thereby dismissing the claim petition, is to be rejected and hence the same needs interference in the hands of this Court.

7. Per contra, the learned counsel for the 2nd respondent represented that appellant had taken treatment in Dr.Rajiikanth Hospital at Karur, at that time, he had not whispered anything about the accident. She would further contend that the negligence is on the part of the appellant, who was walking in the middle of the road and accident itself is disputed, as no FIR has been filed immediately, therefore, it is clear that the alleged injuries are not due to the said alleged accident and

the appellant has not come to this Court with the clean hands, thereby pleaded to dismiss the present appeal.

8. Heard the learned counsel on either side and perused the documents placed on record.

9. From the perusal of the order of the court below, it is to be noted that even though the court below has analysed all the evidences of parties, but wrongly came to the conclusion that the appellant had not stated before the Doctor Rajinikanth Hospital at Karur that the said injury sustained by him is only due to the accident on the road and that the police officials were not informed, hence the Tribunal had held that the accident has not taken place as stated by the appellant and he is not entitle for compensation and had dismissed the claim petition.

10. Earlier, a letter dated Ex.R2 dated 31.03.2004 was written by the Authority of the 2nd respondent to the Rajini Kanth Hospital, Karur, for which a reply letter Ex.R.3 has been issued by the Doctor. It is seen from said Ex.R.3, issued by the Doctor, that the appellant had taken treatment in Doctor Rajinikanth Hospital, Karur for first aid and they have taken to C.M. Hospital at Namakkal and from there only, FIR has been registered and the same has not been informed to the Doctor in Rajinikanth Hospital. Further, in the letter written by the Doctor at Dr.Rajinikanth hospital, it is clearly stated that the appellant was admitted in hospital as inpatient on 08.09.2002 around 4.45 p.m., and on 09.09.2002 at 10.30 a.m. he was discharged from the hospital. The appellant had sustained fracture injuries in the left shoulder and that the appellant had not stated to the Doctor that the said injuries had happened due to the alleged accident. The insurance policy of the vehicle involved in the accident bearing Reg.No.TN47J1607 is marked as Ex.R.1 and a perusal of the same would prove that at the time of accident, the policy is in existence and the said driver of the vehicle was awarded fine before the court.

11. Moreover, the FIR, Motor Vehicle Inspector's report, wound certificate, charge sheet and other documents would prove that the alleged accident had taken place and the appellant / claimant had sustained injuries, just because the appellant has not informed about the alleged accident to the police authorities or negligence on the part of the authorities to register FIR, will not be a blow to the said investigation. That apart, concerned Inspector, who had conducted investigation had filed a charge sheet and the same ended in conviction, hence it is clear that the 2nd respondent / Insurance Company is liable to pay compensation to the injured.

12. The Doctor, who had assessed the disability of the

appellant has fixed the disability as 30% and in support of the same, Ex.P.10, disability certificate, was marked, however, on perusal of the same, it is clear that 'All external wounds attended everyday. Strapping applied and symptomatic treatment', there is no surgery done and strapping was applied. Hence, it would be appropriate to award 10% disability to the appellant, by fixing 2% per disability, Rs.20,000/- is hereby awarded towards disability. Since the appellant had suffered grievous injuries, a sum of Rs.10,000/- is awarded towards Pain and sufferings and as per Medical bills, Rs.9,263/- has been spent by the appellant and hence the same is awarded. Taking note of the fact that the appellant was working as Driver prior to accident and in the absence of any evidence to show that he was earning Rs.5,000/-, this Court is of the view that he would have earned a minimum wages of Rs.3,000/- per month and due to the pain and sufferings, definitely, he would not have gone for work for atleast two months, hence [Rs.3,000X2= Rs.6,000/-] a sum of Rs.6,000/- is hereby fixed as loss of earning during treatment and it is pertinent to point out that a person, would have assisted him to carryout the day today activities, and hence a sum of Rs.2,500/- is hereby awarded towards Attendant Charges. A sum of Rs.2,000/- each is awarded towards Nutrition charges and transportation charges. In total, a sum of Rs.51,763 is hereby awarded to the claimant/ appellant. For useful reference the same is tabulated as follows:

| Sl. | Name of Heads                              | Amount Awarded by this Court |
|-----|--------------------------------------------|------------------------------|
| 01  | Disability @ 10% [Rs.2,000 per disability] | 20,000                       |
| 02  | Pain and sufferings                        | 10,000                       |
| 03  | Medical Bills                              | 9,263                        |
| 04  | Loss of Earning during treatment period    | 6,000                        |
| 05  | Attendant Charges                          | 2,500                        |
| 06  | Nutrition Charges                          | 2,000                        |
| 07  | Transportation Charges                     | 2,000                        |
|     | TOTAL                                      | Rs.51,763                    |

16. In the result, this Civil Miscellaneous Appeal is allowed and a sum of Rs.51,763/- is hereby awarded to the appellant with interest at the rate of 6% per annum from the date of petition till the date of deposit. It is needless for this Court to mention here that the appellant is not entitled to interest for the delay of 892 days in filing the present appeal, as per the order passed by this Court in M.P.No.2 of 2013 in C.M.A.No.SR32282 of 2011 dated 11.07.2013. The second respondent

/ insurance company is directed to deposit the said amount to to the Credit of M.C.O.P.No.779 of 2003 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal, along with interest and costs as determined by this Court, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is permitted to withdraw the amount, by filing an appropriate application before the Court concerned. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,  
Motor Accident Claims Tribunal,  
Chief Judicial magistrate, Namakkal

Copy To

The Section Officer,  
VR Section,  
High Court, Madras

+1cc to Mr.T.Ravichandran, Advocate, S.R.No. 6092  
+3cc to Mr.C.Thangaraju, Advocate, S.R.No. 6252

C.M.A.No.2380 of 2013

AD(CO)  
GN(28/04/2021)

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