

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.2682 of 2013

and

M.P. No.1 of 2013

United India Insurance Co. Ltd.,
Cuddalore.

... Appellant/2nd Respondent

Vs.

1.A.Sheik Abdullah

... 1st Respondent/Petitioner

2.M/s.Karur KCP Packagings Ltd.,
Karur.

...2nd Respondent/1st Respondent

(R2 was set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 21.09.2010, made in M.C.O.P. No.1348 of 2008, on the file of the Additional Sub Court - II, (Motor Accident Claims Tribunal), Cuddalore.

For Appellant : Mr.G.Udayasankar

For Respondent : Mr.Sridhar (For R1)
No appearance (For R2)

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 21.09.2010, made in M.C.O.P. No.1348 of 2008, on the file of the Additional Sub Court - II, (Motor Accident Claims Tribunal), Cuddalore.

2.The appellant is the 1st respondent in M.C.O.P. No.1348 of 2008, on the file of the Additional Sub Court - II, (Motor Accident Claims Tribunal), Cuddalore. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.11.2007.

3.According to the 1st respondent, on the date of accident,

at about 12.30 hours, when he was driving a Tata Sumo Car bearing Registration No.TN-22-A-3282 slowly and carefully, observing all the rules in the Trichy-Chennai Highways, the driver of the Lorry bearing Registration No.TN-47-B-1095 belonging to the 2nd respondent drove the same in a rash and negligent and suddenly without any signal, stopped the vehicle. In spite of due effort, the 1st respondent could not stop his vehicle and dashed the Lorry at backside. Due to which, a Maruthi Desire Car bearing Registration No.TN-45-AK-1336 coming behind the Tata Sumo Car, hit the Tata Sumo Car driven by the 1st respondent and hence, the accident occurred. In the accident, the 1st respondent sustained grievous injuries. The accident occurred due to rash and negligent driving by the driver of the Lorry belonging to the 2nd respondent. The appellant as insurer of the vehicle belonging to the 2nd respondent and 2nd respondent as Owner of the offending vehicle are liable to pay compensation.

4.The 2nd respondent remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the 1st respondent has to prove that the Lorry bearing Registration No. TN-47-B-1095 belonging to the 2nd respondent was insured with the appellant at the time of accident, the driver of the Lorry had valid driving license, the Lorry had valid fitness certificate, registration certificate and permit to ply on road. The 1st respondent also has to prove his age, avocation and income, disability suffered and treatment taken to claim compensation. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and examined two Doctors as P.W.2 and P.W.3 and marked 13 documents as Exs.P1 to P13. The appellant did not let in any oral and documentary evidence.

7.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 belonging to the 2nd respondent vehicle and directed the appellant and 2nd respondent as insurer and owner of the vehicle to jointly and severally pay a sum of Rs.2,57,278/- as compensation to the 1st respondent.

8.Challenging the negligence fixed on the driver of the Lorry as well as the quantum of compensation granted by the Tribunal in the award dated 21.04.2010, made in M.C.O.P. No.1348 of 2008, the appellant - Insurance Company has come out with the

present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that the 1st respondent drove the Tata Sumo Car at a high speed without keeping safe distance and dashed against the backside of the Lorry belonging to the 2nd respondent. Even according to the 1st respondent, the accident has occurred in the signal and there is no possibility of speed driving at the signal. The Tribunal instead of fixing entire negligence on the 1st respondent, erroneously fixed negligence on the driver of the Lorry belonging to the 2nd respondent and fastened the liability on the appellant. The Tribunal ought to have apportioned the negligence on the part of the driver of the Lorry and 1st respondent, who was the driver of the Tata Sumo Car. In any event, the Tribunal ought to have fixed contributory negligence on the part of the 1st respondent. The Tribunal erred in relying on the portion of the FIR. When a document is marked, entire contents of the document should be admitted and document has to be considered in full. The 1st respondent failed to implead the driver, owner and insurer of Maruti Desire Car, which was also involved in the accident and owner and insurer of the Tata Sumo Car driven by the 1st respondent. In any event, the compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the 1st respondent contended that the driver of the Lorry insured with the appellant, in violation of traffic rules, suddenly slow downed the Lorry and due to his negligence, the accident has occurred. The 1st respondent examined himself as P.W.1 and deposed to that effect. The appellant did not let in any contra evidence. The Tribunal considering the evidence of P.W.1 and Ex.P1 - FIR, held that the accident occurred only due to rash and negligent driving by the driver of the Lorry and appellant as insurer of the Lorry is liable to pay compensation. The Tribunal considering the nature of injuries and evidence of 1st respondent as P.W.1, has awarded compensation, which are not excessive and prayed for dismissal of the appeal.

11. Heard learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the materials available on record.

12. It is the contention of the 1st respondent that he was driving the Tata Sumo Car behind the Lorry belonging to the 2nd respondent and driver of the Lorry suddenly slow downed the vehicle without any indication and thus, the accident has occurred. The 1st respondent as P.W.1 deposed to that effect. On the other hand, it is the contention of the appellant that the accident has occurred only due to rash and negligent driving by

the 1st respondent. The appellant did not examine the driver of the Lorry or any eye-witness to substantiate its contention and rebut the evidence of 1st respondent as P.W.1. The Tribunal considering the pleadings, evidence of 1st respondent as P.W.1 and materials placed before it, has rightly held that the accident has occurred only due to rash and negligent driving by the driver of the Lorry and appellant is liable to pay compensation. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as the quantum of compensation is concerned, the 1st respondent deposed about the nature of injuries sustained by him and disability suffered. He also examined P.W.2 and P.W.3 - Doctors. The Doctors, considering the medical report and examining 1st respondent certified that the 1st respondent suffered 50% disability for facial and dental injuries and 35% for Ortho disability. The Tribunal considering the evidence of both the Doctors and documents filed by the 1st respondent with regard to nature of injuries and disability, accepted the same and granted compensation by applying percentage method. It is to be noted that the appellant has not examined any Doctor to disprove the evidence of P.W.2 and P.W.3 - Doctors. The total compensation awarded by the Tribunal under different heads are not excessive, warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.2,57,278/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant and the 2nd respondent are jointly and severally directed to deposit the award amount 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.1348 of 2008. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Gsa

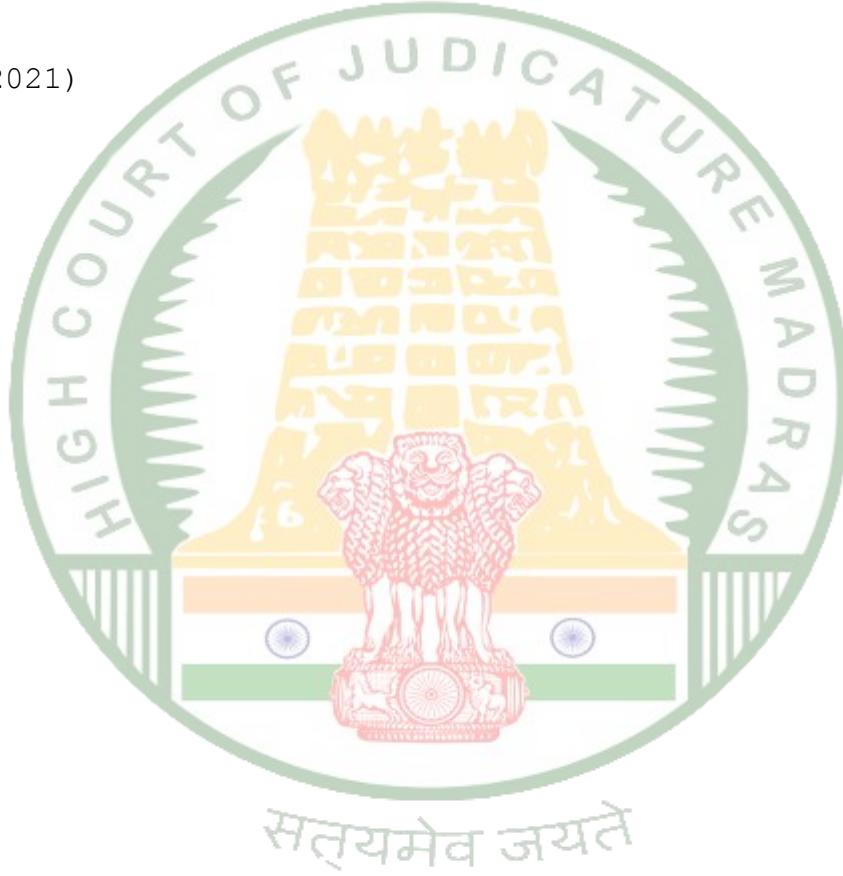
To

1.The Additional Subordinate Judge - II,
(Motor Accident Claims Tribunal),
Cuddalore.

+1cc to Mr.G.Udaya Sankar, Advocate, S.R.No. 33901

C.M.A. No.2682 of 2013

PM (CO)
GN (09/07/2021)



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