

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3737 2012

Branch Manager,
United India Insurance Co. Ltd.
No.95, 1st Floor,
Big Street,
Thiruvannamalai - 606 601. ...Appellant/2nd Respondent

Versus

1.Prabhu S/o. Krishnan

2.S. Chinnasamy S/o. Chinnagounder ...Respondents/Claimant &
1st Respondent

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 29.06.2012 made in M.C.O.P.No.53 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur.

For Appellant : Mr. S. Arun Kumar

For 1st Respondent : Mr.Pa. Suresh Kumar

For 2nd Respondent : No appearance

J U D G M E N T

This appeal is preferred by the Insurance Company against the Award and Decree passed in M.C.O.P. No.53 of 2011 dated 29.06.2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur.

2. The appellant/Insurance company herein is the 2nd respondent, the 1st respondent herein is the petitioner claiming for compensation and the 2nd respondent herein is the 1st respondent who is owner cum driver of the Lorry before the Tribunal.

3. For the sake of convenience, the parties in this appeal will be referred as arrayed before the Tribunal.

4. Brief facts of the case is as follow:

On 07.06.2010 at about 9.45 a.m, when the petitioner was returning home by his TVS Moped bearing Registration No.TN-29-Y-8728, on the road near Hosur to Bangalore NH-7, at Mookadapalli Bus Stop, the 1st respondent, owner cum driver of the lorry bearing Registration No.TN-28-Y-9229 came driving his lorry in a rash and negligent manner and dashed behind the petitioner's TVS Moped. Consequently, the petitioner fell down on the road and sustained crush injury to right foot, fracture of right metatarsal bones, injuries to left leg, head, face and other parts of the body. Immediately, the petitioner was admitted in the Hospital for treatment of injuries sustained in the accident. Due to grievous injuries in the road accident caused by the driver of the lorry, the petitioner has filed claim petition in M.C.O.P. No.53 of 2011 on the file of the Motor accident Claims Tribunal, Sub Judge, Hosur. The Tribunal after perusing entire evidence placed before it, has awarded a sum of Rs. 1,11,500/- to the petitioner along with interest @ 7.5% p.a. from the date of petition till the date of deposit directing the 2nd respondent/Insurance company to deposit the award amount within a period of two months.

5. Being aggrieved over the aforesaid order, the 2nd respondent/Insurance company has filed the present petition challenging the award passed by the Tribunal.

6. The learned counsel for the appellant/Insurance company would contend that the petitioner/1st respondent herein has driven his TVS Moped in drunken state at the time of accident which amounts to violation of terms and conditions of the Insurance policy, thereby the Insurance Company cannot be made liable to pay compensation to the petitioner and prayed to exonerate the Insurance company from payment of compensation.

7. Per contra, the learned counsel for the 1st respondent would submit that on trial, while R.W.2/Doctor, Mr.Sathish Kumar was examined, it was submitted that the injury sustained by the petitioner is grievous injuries and not simple. During the treatment, smell of alcohol was emerged with the petitioner and the blood sample of the petitioner was not examined whether the petitioner was under the influence of alcohol at the time of the accident. Further the Doctor has stated that there is possibility of smell of alcohol even one intake cough syrup for the reason of cold and he did not confirm before the Tribunal as the petitioner was under the influence of alcohol at the time of the accident. In the absence of the medical evidence with regard to drunken driving of the petitioner, the tribunal after considering facts and circumstance of the case, has awarded compensation of Rs.1,11,500/- as claim of the petitioner.

Hence, the Insurance company is liable to pay compensation awarded by the Tribunal.

8. Heard, the learned counsel for the appellant and the learned counsel for the 1st respondent. Despite name printed in the cause list and notice served on the 2nd respondent, none appeared for the 2nd respondent.

9. The Court below has awarded compensation to the petitioner after considering the deposition made by R.W.2/Doctor who has stated that the blood sample of the petitioner was not examined during the treatment and as there is possibility of smell of alcohol while consuming cough syrup, he did not confirm whether the petitioner was driving under the influence of alcohol at the time of the accident. Further, the Court below relying on the Judgment passed by this Court in the case of "The Manging Director, Tamilnadu State Transport Corporation (Kumbakonam Division-II) Ltd. Vs. S. Kannappan" has passed an award of Rs.1,11,500/- as compensation to the petitioner.

10. In the instant case, even though the petitioner is said to have driven under the influence of alcohol moving his vehicle in the wrong way as per the Accident register and Final report, there is no proper medical evidence from the R.W.2/Doctor. At the same time, the 1st respondent/driver of the lorry was not examined to prove whether no fault on the side of the driver for the accident taken place. No other documents were filed by the Insurance company to prove that the said claimant was drunken state at the time of the accident. According to R.W.2, even though there was smell of alcohol with the petitioner during the treatment, there is possibility of smell of alcohol even one consume of cough syrup as per the claimant's counsel submission. Hence he did not confirm that the petitioner was under the influence of alcohol at the time of accident and also confirmed that the petitioner has sustained grievous injuries in the accident and issued permanent disability certificate at 30% after examining the petitioner.

11. Under these circumstances, this Court agrees with the findings of the Tribunal when there is no proof to show that the petitioner was under the influence of alcohol while he was driving his TVS Moped at the time of the accident. Hence, the contention on the above ground made by the learned counsel for the appellant is hereby rejected. At the same time, taking into consideration of the final report/Ex.R3 filed by then Sub-inspector, Hosur, whereby the petitioner is stated to be in a state of drunken driving and caused the accident, this Court is of the view that the part amount of the award shall be reduced as per the details given below.

SL. No.	Particulars	Amount (Rs.)
1	Loss of earning capacity reducing to 20%	40,000.00
2	Transport Expenses	5000.00
3	Extra-nourishment	5000.00
4	Pain, shock and Sufferings	30,000.00
5	Medical Expenses	11,500.00
6	Attendant Charges	2,500.00
1 Amount	Tota	94,000.00

12. Thus, the compensation awarded by the Tribunal has been reduced as stated above and the 1st respondent/Insurance company is directed to withdraw the balance amount after deducting the award amount passed by this Court from the Tribunal if the entire award was deposited before the Tribunal as per order dated 11.01.2013 of this Court. The petitioner/1st respondent herein is permitted to withdraw the balance award amount along with interest.

13. This Court is of the view that in many cases, it is found that the person sustained injuries in the accident is to be noted in the accident register and wound certificate whether the injured person is under the influence of alcohol during the admission for treatment whereas no blood test has been taken in the hospital to prove his drunken state. Hence, the doctors in the hospital are directed to take blood sample test of the injured person whoever admitted in the trauma care unit in the road accident cases, to find out amount of alcohol in the blood test whether more than permitted level under Section 185 of M.V. Act, to decide the issue in a proper manner in the interest of justice.

14. In view of the above observation and direction, the appeal filed by the Insurance Company/appellant herein is partly allowed. There shall be no costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

lbm

To

1.The Motor Accident Claims Tribunal, Sub Court, Hosur.

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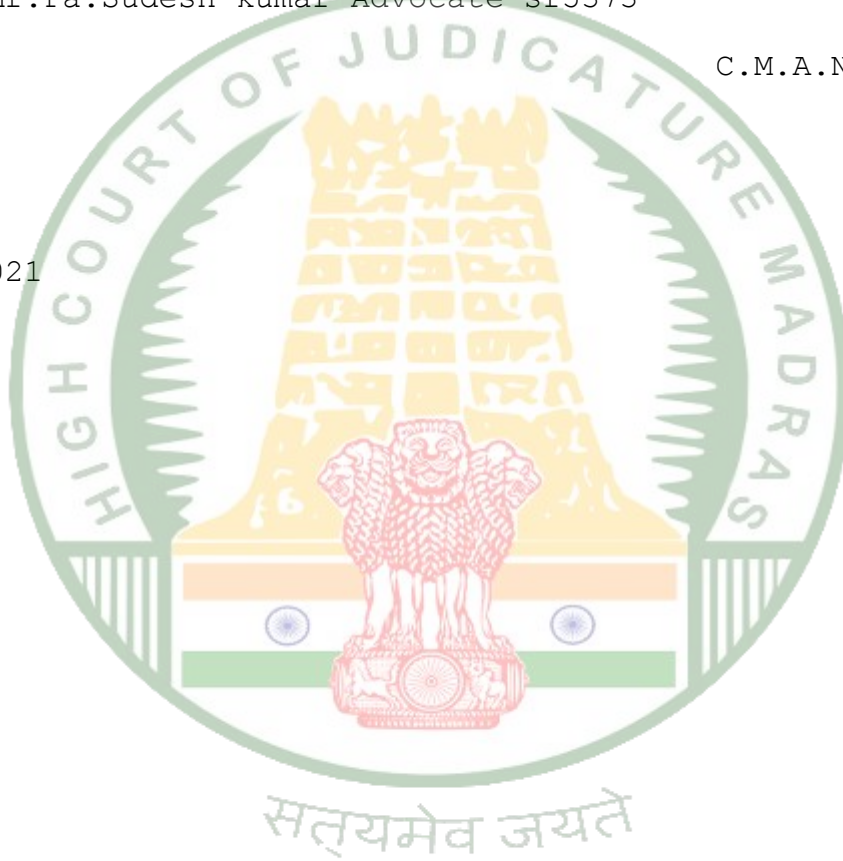
The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.S.Arunkumar Advocate sr5808

+1 cc to Mr.Pa.Sudesh kumar Advocate sr5373

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