



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3136 of 2013

Shanmugam

.. Appellant/Petitioner

Vs.

1.S.S.Murugesan

(R1 was set exparte before the Tribunal
and hence, notice to R1 is dispensed with)

2.National Insurance Company Limited
Divisional Office, Perundurai road
Erode.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.10.2012 made in M.C.O.P.No.332 of 2008 on the file of Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

For Appellant : Mr.C.Kulanthaivel

For R2 : Ms.N.B.Surekha

R1 : Exparte

J U D G M E N T

The matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed challenging the order of dismissal dated 19.10.2012 made in M.C.O.P.No.332 of 2008 on the file of Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

2.The appellant is claimant in M.C.O.P.No.332 of 2008 on the file of Motor Accident Claims Tribunal, Sub Court, Tiruchengode. He filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.11.2002.



3. According to the appellant, on the date of accident i.e., on 03.11.2002 at about 2.30 p.m., while he was riding in his two wheeler along with his grandson from Koottappalli to Tiruchengode Rajagoundampalayam, in Tiruchengode to Erode Main Road, the driver of the bus belonging to the 1st respondent drove the same in a rash and negligent manner, hit against the appellant and caused the accident. Due to the accident, the appellant sustained grievous injuries all over the body and hence, he filed the above said claim petition claiming compensation against the respondents.

4. The 1st respondent, owner of the bus, remained exparte before the Tribunal.

5. The 2nd respondent/Insurance Company being insurer of the bus filed counter statement denying the averments made in the claim petition and stated that the appellant is a tort-feasor and for his own negligence, the accident has occurred. Therefore, the appellant is not entitled to get any compensation. The bus belonging to the 1st respondent was not involved in the accident. F.I.R. registered by Tiruchengode Police Station was dropped for the reason that the appellant himself hit against the back side of the stationed bus, he himself fell down on the road. Based on the final report, F.I.R. was closed as 'mistake of fact'. The appellant as well as the driver of the bus belonging to the 1st respondent did not possess valid driving license at the time of accident. There is no valid Insurance policy on the date of accident. Therefore, the 2nd respondent is not liable to pay any compensation to the appellant. The 2nd respondent has also denied the age, avocation, income and nature of injuries sustained by the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.R.Krishnasamy and Dr.John Gurubatham were examined as P.W.2 and P.W.3 respectively and marked seven documents as Exs.P1 to P7. On the side of the 2nd respondent/Insurance Company, one Mr.Karthick, official of the 2nd respondent/Insurance Company was examined as R.W.1 and three documents were marked as Exs.R1 to R3.

7. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the appellant has not proved that the accident has occurred due to rash and negligent driving by the driver of the bus belonging to the 1st respondent.



8. Against the said order of dismissal dated 19.10.2012 made in M.C.O.P.No.332 of 2008, the appellant has come out with the present appeal.

9. The learned counsel appearing for the appellant contended that the Tribunal erroneously dismissed the claim petition holding that the appellant failed to prove that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the 1st respondent and also failed to produce the Motor Vehicle Inspector's Report, observation mahazar and rough sketch. The learned counsel for the appellant further contended that the Tribunal ought not to have relied on the certificates issued by the Police that the complaint was closed as 'mistake of fact'. When the final report was not available in the Police Station and unless the author of the said report/certificate was examined and proved, the same cannot be relied on by the Tribunal. The appellant examined himself as P.W.1 and marked F.I.R. as Ex.P1, which was registered against the driver of the bus. The 2nd respondent/Insurance Company has not let in any evidence to prove their stand.

9(i) The learned counsel appearing for the appellant further contended that the appellant was aged 60 years at the time of accident and was working as a teacher in a private school and was earning a sum of Rs.10,000/- per month. In the accident, the appellant sustained grievous injuries, fracture on the throat, neck and fracture of hyoid bone and thyroid bond and suffered permanent disability. The appellant examined himself as P.W.1 and examined the Doctor as P.W.3, who treated the appellant. The appellant also examined P.W.2/Doctor, who examined the appellant and assessed that the appellant suffered 24% permanent disability. For the injuries, the appellant has taken treatment as in-patient in Lotus Hospital, Erode, from 03.11.2002 to 20.11.2002. The appellant filed discharge summary, disability certificate, wound certificate and medical bills and proved the injuries, treatment taken and disability suffered by him and prayed for allowing the appeal and for grant of compensation for the injuries sustained by him in the accident.

10. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the accident did not occur as alleged by the appellant. The complaint given by the grandson of the appellant was dropped as 'mistake of fact'. In the final report of the Investigating Officer, it has been stated so. The District Superintendent of Police, Namakkal and Inspector of Police, Tiruchengode, issued certificates to that effect and the same were marked as Exs.R1 and R2. In the report, it has been stated that the appellant dashed against the back side of the stationed bus and fell down. The Tribunal considering the above materials dismissed the claim petition.



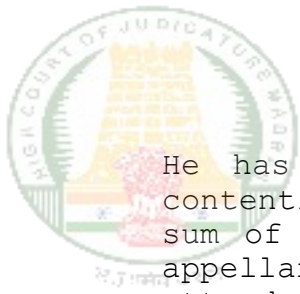
There is no reason to interfere with the said award of the Tribunal. The amounts claimed by the appellant are excessive and prayed for dismissal of the appeal.

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

12. It is the specific case of the appellant that while he was riding the two wheeler with his grandson as pillion rider, the driver of the bus belonging to the 1st respondent drove the same in a rash and negligent manner and hit against the two wheeler. Due to the said impact, the appellant fell down on the road and sustained injuries. To substantiate this contention, the appellant examined himself as P.W.1 and marked F.I.R. as Ex.P1, which was registered against the driver of the bus based on the complaint given by the grandson of the appellant. It is the contention of the 2nd respondent/Insurance Company that the appellant rode the two wheeler in a rash and negligent manner and hit on the back side of the stationed bus. To substantiate this contention, the 2nd respondent/Insurance Company has not examined any eye-witness or the 1st respondent, who is the owner of the bus or the driver of the bus. On the other hand, they relied on Exs.R1 and R2, the certificates issued by the District Superintendent of Police, Namakkal and Inspector of Police, Tiruchengode and stated that the complaint registered against the driver of the bus was dropped as 'mistake of fact'. The 2nd respondent has not produced the final report of the Police or let in any evidence to show that the alleged final report was filed before the competent Judicial Magistrate and the same was taken on file. The 2nd respondent has also not examined the authors of Exs.R1 and R2. There is nothing on record to show as to who investigated the complaint, examined the witness, recorded their statements and based on which F.I.R. was dropped as 'mistake of fact'.

13. From the materials on record, it is seen that the 2nd respondent has not let in any acceptable evidence contrary to the averments made in the claim petition as well as the evidence of P.W.1. The Tribunal without properly appreciating the evidence of appellant as P.W.1 along with the documents filed by the appellant, erroneously dismissed the claim petition. This Court holds that the appellant has proved that the accident has occurred due to rash and negligent driving by the driver of the bus belonging to the 1st respondent and the 2nd respondent as insurer of the bus is liable to pay the compensation.

14. As far as quantum of compensation is concerned, the appellant has claimed that he was working as a teacher in a private school and was earning a sum of Rs.10,000/- per month.



He has not produced any material to substantiate the said contention. The accident has occurred in the year 2002. Hence, a sum of Rs.3,500/- per month is fixed as notional income of the appellant. Due to the injuries, the appellant would not have attended the work atleast for a period of four months. Hence, a sum of Rs.14,000/- (Rs.3,500/- x 4) is awarded towards loss of income for a period of four months.

14(i).The appellant has stated that in the accident, he sustained injuries on his face, neck and suffered permanent disability. He examined Dr.R.Krishnasamy as P.W.2, who certified that the appellant suffered 24% disability and examined Dr.John Gurubatham as P.W.3, who treated the appellant. Both P.W.2 and P.W.3/Doctors deposed the nature of injuries and disability suffered by the appellant. The appellant has not proved that he suffered functional disability. In view of the same, the compensation is granted by adopting percentage method. The accident is of the year 2002 and hence, a sum of Rs.1,000/- is awarded per percentage of disability. Thus, a sum of Rs.24,000/- is granted towards 24% disability.

14(ii). The appellant has taken treatment in Lotus Hospital, Erode, as in-patient from 03.11.2002 to 20.11.2002. Considering the nature of injuries, disability, age of the appellant and treatment taken, Rs.7,500/-, Rs.7,500/-, Rs.10,000/- and Rs.10,000/- are awarded towards attendant charges, extra nourishment, loss of amenities and pain and suffering respectively. The appellant contended that he has spent a sum of Rs.33,318.85 towards medical bills and Rs.360/- towards x-ray bills and to prove the same, he produced Ex.P2/medical bills and Ex.P6/x-ray bills. Hence, a sum of Rs.33,680/- (Rs.33,318.85 + 360 = 33,678.85 rounded off to Rs.33,680/-) is awarded towards medical bills. Thus, the appellant is entitled to the following compensation:

Sl. No.	Description	Amount awarded by this Court (Rs)
1.	Disability	24,000
2.	Pain and suffering	10,000
3.	Attendant charges	7,500
4.	Extra nourishment	7,500
5.	Loss of income	14,000
6.	Medical expenses	33,680
7.	Loss of amenities	10,000
	Total	Rs.1,06,680/-



15. In the result, the Civil Miscellaneous Appeal is partly allowed. A sum of Rs.1,06,680/- is awarded as compensation together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any on the compensation awarded by this Court. 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. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

kj

To

1. The Subordinate Judge
Motor Accident Claims Tribunal
Tiruchengode.

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

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.34558

+1cc to Ms.N.B.Surekha, Advocate SR.No.34433

C.M.A.No.3136 of 2013

NRL (CO)
GMY (06/05/2021)