

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2020

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3565 of 2013

and

M.P.No.1 of 2013

The Branch Manager,
The New India Assurance Company Ltd.,
Gobichettipalayam. Appellant/2nd Respondent

Vs.

1. K.Ramamurthy1st Respondent/Petitioner
2. M/s Sundaram Enterprises
rep.by Proprietor,
No.40/21. Moolavaikal,
Karattipalayam Post, Gopi.2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside and modify the decree and Judgment dated 23.09.2011 made in MACTOP No.1695/2009 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tiruppur.

For Appellant : Mr.P.G.Padmanabhan
R1 : NA
R2 : Exparte before Tribunal

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 23.09.2011 made in MACTOP No.1695/2009 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tiruppur.

2.The appellant is the Insurer of the vehicle. The first and Second respondents are the claimant and owner of the vehicle respectively.

3.It is the case of the first respondent that on 07.12.2009 at about 11.30 hours when he was riding his two wheeler bearing Registration No.TN-38-AL-1010 from Kittampalayam to Karuvulur Road, a lorry bearing Registration No.TN-36-K-5412 came in the

opposite direction and dashed against the two wheeler. Due to the impact the rider of the two wheeler sustained injuries. The accident occurred due to the rash and negligent driving of the driver of the lorry. Therefore, he filed a claim petition before the Tribunal against the owner and insurer of the lorry, seeking Rs.9,00,000/- as compensation. The Tribunal after analysing the oral and documentary evidence awarded Rs.4,33,000/- as compensation.

4. Aggrieved by the award passed by the Tribunal, the appellant/Insurance Company has filed this appeal before this Court.

5. Before the Tribunal on the side of the appellant three witnesses were examined viz., P.W.1 and P.W.3 and marked eight documents viz., Ex.P1 to Ex.P8. The respondents have neither examined any witness nor marked any documents.

6. The learned counsel for the appellant/Insurance Company contend that the driver of the two wheeler does not possess valid driving license at the time of accident. Hence the Insurer of the Vehicle is not liable to pay compensation. But, the Tribunal fastened the liability on the part of this Insurance Company, which is unfair and warrants interference of this Court.

7. Despite notice being served to the first and second respondents they have not engaged any counsel or appeared in person. Hence considering the paucity of time the appeal itself is taken up for final disposal, since the disposal of this case will not affect them in any manner.

8. Heard the learned counsel for the appellant and perused the materials available on record.

9. On a perusal of the records, it is seen that the appellant viz., United India Insurance has filed a counter affidavit before the Tribunal, submitted that the allegation contained in the claim petition are false and the rider of the two wheeler does not possess valid driving licence at the time of accident. Hence, he did not come forward to lodge any complaint to the police and only for the purpose of availing compensation he has given false complaint to the police. It was also stated that the averments in the claim petitioner are false.

10. In the award passed by the Tribunal two points were raised for consideration and point no.1 is that "Whether the accident had occurred due to the rash and negligent of the driver of the lorry or not". The said aspect was discussed elaborately. The Claimant/Injured was examined as P.W.1 and he deposed that the

rash and negligence on the part of the driver of the lorry is the cause for the accident. From Ex.P.1/F.I.R and Ex.P.2/Motor Vehicle Inspector's report it is seen that the driver of the lorry is the cause for the accident. Hence, the Tribunal arrived at a conclusion that the driver of the lorry is the tort feaser for the accident.

11.The Tribunal further observed that the Insurance Company / appellant herein has neither let in any evidence nor marked any documents before the Tribunal. Nothing prevented them from marking any documents or producing any evidence before the Tribunal. When the best evidence / document available with the appellant herein is not examined / marked before the Tribunal, it cannot be contend to say at the later stage by the appellant that the award passed is excess or disproportionate to the injuries sustained by the claimants. Taking note of the same, the Tribunal has fastened the liability on the side of the appellant herein. The findings rendered by the Tribunal are persuasive which cannot be brushed aside easily. No new fact is forthcoming to assail the reasonings rendered by the Tribunal. Hence, the findings on negligence by the Tribunal are confirmed as such.

12.With regard to quantum, based on the avocation of the injured the Tribunal has fixed Rs.4,000/- as monthly income and arrived Rs.48,000/-(Rs.4,000 x 12) as annual income. Considering the age of the injured '17' multiplier is being applied and arrived Rs.8,16,000/-(Rs.48,000 x 17) as loss of income. Based on Ex.P.7/Disability Certificate the Tribunal fixed the percentage of disability as 35% and considering the same Rs.2,85,600/-(Rs.8,16,000 x 35%) was awarded towards the head loss of income. Based on Ex.P.3 and Ex.P.8 the Tribunal awarded Rs.1,34,000/- and Rs.5,000/- towards the head Medical bills and Pain and sufferings. Apart from this Rs.3,000/- and Rs.5,000/- was awarded towards Transportation and Extra nourishment. Thus, the amount awarded by the Tribunal is as follows:

S.No.	Particulars	Amount
1	Loss of income for 35% Permanent Disability	Rs.2,85,600/-
2	Transportation	Rs.3,000/-
3	Extra Nourishment	Rs.5,000/-
4	Medical Bills	Rs.1,34,400/-
	Total	Rs.4,33,000/-

Thus, quantified Rs.4,33,000/- as total compensation. This Court is of the view that the finding of the Tribunal with

regard to quantum is based on the weightage of evidence, probabilities of case and settled principles of law and hence the same is confirmed.

13.In view of the above, this Court do not find any error in the award dated 23.09.2011 passed by the Tribunal in M.C.O.P.No.1695 of 2009 and there is no merit in the appeal. Hence, this Court is not inclined to interfere with the same.

14.In the result, the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company and the second respondent/owner of the lorry are jointly and severally liable to pay compensation to the first respondent and are directed to deposit the awarded amount with 7.5% p.a from the date of petition till the date of deposit, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant/first respondent is permitted to withdraw the compensation as awarded by the Tribunal along with interest and costs, less the amount, if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

smn
To

The Principal Sub Judge,
Motor Accident Claims Tribunal,
Tiruppur.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.P.G.Padmanabhan, Advocate Sr.14836

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