

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3713 of 2013

Govindan

... Appellant/Petitioner

Vs.

1.Jayashree Ganesh

2.The ICICI Lombard General Insurance,
Zenith House, Keshavrao Khade Marg,
Mahalakshmi, Mumbai - 400 034. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 19.12.2012 made in M.C.O.P.No.36 of 2009 on the file of the Subordinate Judge (Motor Accidents Claims Tribunal), Madurantakkam, Kancheepuram District.

For Appellant : Mr.N.Varadharajan
For Mr.N.Nagu Sah

For R2 : Mrs.R.Sreevidhya

For R1 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree 19.12.2012 made in M.C.O.P.No.36 of 2009 on the file of the Subordinate Judge (Motor Accidents Claims Tribunal), Subordinate Court, Madurantakkam, Kancheepuram District.

2. The appellant is the claimant in M.C.O.P.No.36 of 2009 on the file of Subordinate Judge (Motor Accidents Claims Tribunal), Subordinate Court, Madurantakkam, Kancheepuram District. He filed the said claim petition claiming a sum of Rs.1,00,000/-as compensation for the injuries sustained by him in the accident that took place on 13.07.2008.

3. The case of the appellant is that on 13.07.2008 at about 7.30 hours, while the appellant proceeding towards west to east direction in the sand portion of the Thozhupedu koot road, the vehicle bearing Registration No.TN-07-L-9227 (Santro Car) proceeding towards Chennai to Tindivanam direction came rashly and negligently and hit the appellant, which resulting in the appellant sustaining grievous injuries. In spite of treatment, the appellant becomes permanently disabled and not able to do his routine as earlier. The appellant is the only bread winner of entire family. Hence the appellant filed a petition before the Subordinate Judge (Motor Accidents Claims Tribunal), Subordinate Court, Maduranthakam, Kancheepuram District claiming a sum of Rs.1,00,000/- as compensation from the respondents.

4. The first and second respondents remained ex-parte and have not filed any counter or documents to defend the case in the Court below.

5. During the trial before the Tribunal, on the side of the appellant, the appellant himself was examined as PW1 and marked documents as Exs.P1 & P2. Neither oral evidence let in nor documents marked on the side of the respondents.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to the negligent driving of the first respondent's driver and directed the respondents 1 and 2 to pay a sum of Rs.25,000/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant herein has come out with the present appeal seeking enhancement of compensation.

7. Heard Mr.N.Varadharajan, learned counsel appearing for the appellant and Mrs.R.Sreevidhya, learned counsel appearing for the second respondent. No representation on behalf of the first respondent.

8. On perusal of the award dated 19.12.2012 passed by the learned Subordinate Judge (Motor Accidents Claims Tribunal), Maduranthakam, Kancheepuram District., it is observed that the appellant has not produced any materials to show that he had sustained grievous injuries and the Court below has come to the conclusion based on the wound certificate-Ex.P2 that the appellant had sustained injury of simple nature and awarded a sum of Rs.25,000/- under the heads of pain and sufferings & Loss of income. Further, the respondents have not filed any counter denying the allegations made by the appellant. The Court below has rightly held that due to the negligence on the part of the first respondent's vehicle bearing Registration No.TN-07-L-9227 (Santro Car), the appellant had sustained injury of simple

nature. The Tribunal has fixed the liability on both the respondents/Insured as well as Insurer and directed the respondents herein to deposit the amount of Rs.25,000/- (Rs.12,500/- each) along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

9. Today, the learned counsel for the appellant has submitted the insurance policy, which covers insurance period from 23.11.2007 to 22.11.2008. To deny the same, neither the Insured nor the Insurer has made any averment or arguments before this Court. Hence, the second respondent/Insurance Company is liable to pay the quantum arrived at by the Tribunal at Rs.25,000/- and the Insured/owner should be exonerated from paying the compensation amount.

10. In the result, this Civil Miscellaneous Appeal is partly allowed by confirming the quantum arrived at by the Tribunal, but modifying the findings on negligence on the owner of the vehicle. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge (Motor Accidents Claims Tribunal),
Madurantakkam,
Kancheepuram District.

Copy to

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

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