

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3721 of 2013

M.Ganesan

... Appellant/Claimant

Vs.

1. K.Sankar

2.The Oriental Insurance Company Ltd,
Rep by its Divisional Manager,
Divisional Officer,
No.1, Karpadi Road,
Vellore - 4.

... Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.96 of 2005 dated 08.11.2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Arni.

For Appellant : Mr.P.Sathish Kumar

For Respondents : Mr.K.Vinod

for Elveeran Ravindran for R2.

R1 - Notice Served. No appearance.

J U D G M E N T

The appellant is the claimant filed this appeal, against the judgment and decree made in MCOP.No.96 of 2005 dated 08.11.2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Arni.

2. This appeal has been filed against the dismissal of the claim petition filed by the claimant. On 22.05.2005 at about 2.45am, as a employee of the first respondent proceeded to Vellore town in the goods auto bearing Reg.No.TN 23 AY 3378 which is owned by the first respondent and insured with the 2nd respondent. The said vehicle was proceeding to Madras Bangalore road, while nearing Poigai Village, Samathuvapuram a lorry attempted to overtake a bus in the opposite direction. At that time, the said lorry lost control and slightly dashed against the backside of the auto and sped away from the scene of accident without stopping the vehicle. Thereby, the claimant

sustained multiple injuries all over the body and fractures. The injury sustained by the petitioner is grievous and caused permanent disability to the claimant. The first respondent being the owner of the vehicle and the 2nd respondent is the insurer of the vehicle, the claimant travelled in the vehicle in the capacity of employee, hence, the respondents 1 and 2 are vicariously liable to pay the compensation.

3. After the accident, the claimant was admitted in the Vellore Government Hospital for 15days and went to Puttur six times for putting bandage. At the time of accident, the claimant was 18years and working as coolie under the first respondent and earning a sum of Rs.4,000/p.m., after the accident he was not able to do the work as like others. An FIR in Cr.No.173 of 2005 has been registered under Section 279 and 337 IPC on the file of Virungipuram Police Station, at later point of time, the criminal case was also dropped as it was hit and run case, the address of the lorry was not known.

4. The learned counsel for the second respondent/insurance company stated that they are not liable to pay any compensation. The offending vehicle lorry driver and the insurer of the lorry are liable to pay the compensation. As the driver of the lorry or the insurer has not been made as party to the proceedings. The other issue is that no motor vehicle inspector report was not produced before the Court and prays for dismissal of the claim petition.

5. In order to prove the case of the claimant, the claimant examined PW1 and PW2 and marked Ex.P1 to Ex.P5. On the side of the second respondent one Palanisamy was examined as DW1 and marked Ex.D1 to Ex.D5.

6. Heard both sides and perused the materials available on record.

7. Based on the materials available on record and the disability sustained by the claimant, the Tribunal has come to the conclusion that the details of the lorry has not been furnished, the owner of the lorry and the insurer of the lorry have not been made as a party to the proceedings. The criminal complaint has also been dropped by the police stating as it was hit and run case, the where abouts and address of the lorry was also not known. The Tribunal rejected the claim of the claimant by dismissing the claim petition stating that the respondents 1 and 2 are tort-feasor and not liable to pay any compensation.

8. On a bare perusal of the policy conditions, it says the liability is for only two persons as the seating capacity i.e., the driver and another person, either as employee or non fare

passenger and legally liability for employee/driver. The amount has been paid by the owner of the Auto to the Oriental Insurance Company Limited as no fault liability, the insurance company shall pay a sum of Rs.25,000/- to the injured person/claimant. This Court is of the view as the claimant is only 18years at the time of accident, on the ground of theory of no fault liability. The second respondent/insurance company shall pay a sum of Rs.25,000/- to the injured person in a lumpsum as stipulated in the policy condition, without bearing any interest.

9. In the result, the civil miscellaneous appeal is allowed by setting aside the judgment and decree made in MCOP.No.96 of 2005 dated 08.11.2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Arni. The second respondent/insurance company is directed to deposit the said amount within a period of eight weeks from the date of receipt of copy of the Judgment and on such deposit, the appellant/claimant is permitted to withdraw the entire amount by filing separate cheque application. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsh

To

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

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

+1 cc to M/s.P.Satheesh kumar, Advocate Sr.No. 4516

+1 cc to M/s.Elveera Ravichandran, Advocate Sr.No. 4240

C.M.A.No.3721 of 2013

GP (CO)
RMP (27/04/2021)

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