

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.689 of 2013
and
M.P.No.1 of 2013

United India Insurance Company Limited,
81, Katpadi Road, T.K.M. Complex,
Vellore. .. Appellant/2nd Respondent

Vs.

1.P.Rajamani

2.S.Raju .. Respondents/Petitioner/
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.10.2012 made in M.C.O.P.No.152 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Vellore.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.SP.Yuvaraj

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 04.10.2012 made in M.C.O.P.No.152 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Vellore.

3.The appellant is the 2nd respondent in M.C.O.P.No.152 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Vellore. The 1st respondent filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.11.2011.

4.According to the 1st respondent, on 05.11.2011 at about 11.00 A.M., while he was riding his TVS XL motorcycle bearing

Registration No.TN 25 X 2817 at extreme left side of the Bagayam - Arni road opposite to Maharani Ice Cream Stall, Thuthipattu from South to North, the driver of the bus belonging to 2nd respondent drove the bus in a rash and negligent manner from North to South without following the road traffic rules, dashed against the 1st respondent and caused the accident. In the accident, the 1st respondent sustained multiple injuries all over the body. Immediately after the accident, he was taken to Government Vellore Medical College and Hospital, Vellore for first aid treatment. Thereafter he was shifted to CMC Hospital, Vellore for further medical treatment. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the bus.

5.The 2nd respondent, being the owner of the bus remained exparte before the Tribunal.

6.The appellant-Insurance Company, being the insurer of the bus belonging to the 2nd respondent filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the driver of the 2nd respondent's bus drove the same cautiously, slowly by following all the traffic rules and regulations. The 1st respondent only rode his TVS XL motorcycle in a rash and negligent manner and dashed against the 2nd respondent's bus and invited the accident. Both the 1st respondent as well as the driver of the bus belonging to 2nd respondent were not possessing driving license at the time of accident. Further the 1st respondent's motorcycle was not insured at the time of accident. The 1st respondent has to prove that the 2nd respondent's bus was having valid badge, insurance policy and fitness certificate at the time of accident. The accident has occurred only due to negligence on the part of the 1st respondent. Hence, the appellant is not liable to pay any compensation to the 1st respondent. The appellant denied the age, avocation, income, nature of injuries and period of treatment taken by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.Shanmugasundaram was examined as P.W.2 and 13 documents were marked as Exs.P1 to P13. The appellant-Insurance Company did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to 2nd respondent and directed the 2nd respondent and appellant to

jointly and severally pay a sum of Rs.2,69,900/- as compensation to the 1st respondent.

9. Against the said award dated 04.10.2012 made in M.C.O.P.No.152 of 2012, the appellant has come out with the present appeal.

10. The learned counsel appearing for the appellant contended that the Tribunal failed to note that in the claim petition filed under Section 166 of Motor Vehicles Act, the claimant has to prove the negligence. The 1st respondent did not let in any independent witness and proved the negligence on the part of the driver of the bus belonging to 2nd respondent. The Tribunal failed to note that 1st respondent failed to furnish the driving license and insurance particulars. At the time of accident, the 1st respondent was under the influence of alcohol and accident occurred only due to the negligence on the part of the 1st respondent. P.W.2/Doctor assessed the disability of 1st respondent excessively. The Tribunal failed to note that 1st respondent has not taken any continuous treatment. In the absence of any evidence, the Tribunal erroneously awarded compensation by adopting multiplier method and granted compensation excessively and prayed for setting aside the award passed by the Tribunal.

11. The learned counsel appearing for the 1st respondent made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13. From the materials available on record, it is seen that it is the contention of the 1st respondent that while he was riding his TVS XL motorcycle on Bagayam - Arni road near Maharani Ice Cream Stall, Thuthipattu, the driver of the bus belonging to 2nd respondent, who was driving the bus in the opposite direction in a rash and negligent manner, dashed against the motorcycle rode by the 1st respondent and caused the accident. In the accident, the 1st respondent sustained injuries. To prove the said contention, the 1st respondent examined himself as P.W.1 and marked F.I.R. as Ex.P1, which was registered against the driver of the bus belonging to 2nd respondent. On the other hand, it is the contention of the appellant that the accident did not occur as alleged by the 1st respondent. According to appellant, the 1st respondent was under the influence of alcohol at the time of accident and he himself invited the accident. He is the tortfeasor and hence, he is not entitled to claim any compensation from the appellant. The

appellant has not let in any oral and documentary evidence to substantiate their contention. The appellant relied on Ex.P2/Accident Register, wherein it has been mentioned that 1st respondent was smelling alcohol. The Tribunal considered the said contention and found that Doctor has not certified that 1st respondent was under the influence of alcohol and rejected the contention of the appellant in this regard.

14.The Tribunal considering the evidence of 1st respondent as P.W.1, Ex.P1/F.I.R., judgment of Criminal Court and in the absence of any contra evidence let in by the appellant, held that accident has occurred only due to rash and negligent driving by the driver of the bus belonging to 2nd respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

15.As far as quantum of compensation is concerned, the Tribunal considering that 1st respondent was an Ex-Serviceman aged 48 years and was working as Security Guard and that he could not continue his work as Security Guard due to the injuries and disability suffered by him in the accident, applied multiplier method fixing 35% as functional disability and awarded compensation under different heads, which are not excessive. The appellant has not made out any case for setting aside the award of the Tribunal.

16.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.2,69,900/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The 2nd respondent as well as the appellant-Insurance Company are jointly and severally directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.152 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Vellore. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

krk

To

1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Vellore.

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

+1 cc to Mr.SP.Yuaraj Advocate sr41735

C.M.A.No.689 of 2013

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