

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.528 of 2016
and
C.M.P.No.4417 of 2016

M/s.Oriental Insurance Company Ltd.,
Third Party Cell,
No.115, Broadway,
Chennai-20.Appellant/2nd Respondent

/versus/

1.C.Radhakrishnan ..Respondent/Petitioner

2.K.Navoji ..Respondents/1st Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 31.07.2015 made in M.C.O.P.No.1169 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Chennai.

For Appellant : M/s.S.Arunkumar

For Respondents: No appearance for R1

: Ex-parte for R2

J U D G M E N T

(The case has been heard through video conference)

Heard the learned counsel appearing for the appellant. In spite of several adjournments, there is no representation for the respondent/claimant.

2. This Civil Miscellaneous Appeal is filed by the Insurance Company challenging the quantum as well as the liability.

3. The facts of the case under consideration is that on 10.09.2010, at about 5.30 p.m., when the claimant was riding his TVS motorcycle bearing registration No.TN 04 V 7922 along with his grandson near Gandhi statue, Kamarajar Salai, Mylapore, a Santro car bearing registration No.TN 05 AB 8601 proceeding on the same direction dashed the claimant's vehicle rash and negligently causing grievous injury to the claimant. Seeking compensation of Rs.4,50,000/- against the owner of the Santro car and the Insurer of the car, petition before the Motor Accidents Claims Tribunal, Chennai was made.

4. The Insurance Company contested the claim on the ground that the accident occurred due to the negligence of the claimant. He had no valid driving license and the First Information Report was filed against him for rash and negligent

Ex.R1, in which, the claimant was shown as accused for his rash and negligent driving. However the Tribunal accepting the evidence of PW-2 claims to be an eye witness of the accident and fixed the negligence on the car driver and awarded a sum of Rs.2,50,000/- as compensation. Aggrieved by that, the present appeal is filed.

6. The learned counsel appearing for the appellant would submit that the Tribunal erred in accepting the evidence of PW-2, who is only a planted witness and no evidence to show that he was present at the time of accident, whereas Ex.R-1 - FIR is more authenticated to ascertain the real tort-feasor. Referring the Motor Vehicle Inspector report marked as Ex.R-4, the learned counsel would submit that the rear side box of the motorcycle was damaged. As such the version of the claimant that right side handle bar of the motorcycle hit by the car got falsified. Being the tort-feasor, the claimant is not entitled for compensation and certainly not higher than what stated under no fault liability.

7. The records and the evidence relied by the claimant as well as the Insurance Company reveals that the claimant was admitted in the St.Isabel hospital, Chennai after the accident and in the AR report it has mentioned as road accident involving a car while going on two wheeler. The First Information Report, which was marked as Ex.R-1, indicates that the claimant due to his negligence dashed against the car and sustained injury. The nature of injury sustained by him is as follows:-

- 1.Abrasions 1x1" in right frontal region of skull
- 2.Abrasions 1x1" about right eyebrow
- 3.Abrasions 1x1" below right eyebrow
- 4.Abrasions on right dorsum of hand
- 5.Abrasions on right little toe
- 6.Abrasions 1x1 ½ " on the dorsum of hand

The discharge summary Ex.P-3 indicates that he sustained left temporal SDH/Head injury/Left Temporal Hemorrhagic contusion.

8. For the said injury, PW-3 has assessed partial and permanent disability at 50%. This assessment has been made after four years of the accident. As pointed out by the learned counsel for the appellant, when the FIR clearly indicates that the claimant is a tort-feasor and the presence of PW-2 nowhere been indicated, but for the first time before the Tribunal it is incorrect to totally exonerate the tort-feasor contrary to the police records. The Tribunal has erred in fixing the entire negligence on the driver of the car as the offender.

9. Therefore, this Court is of the view that without the contribution of the claimant the accident could not have occurred. Merely based on the evidence of PW-2, whose presence at the scene of occurrence itself is highly doubtful, fixing the liability in entirety on the car driver is erroneous. 20% of the contribution has to be fixed on the claimant, since the Motor Vehicle Inspector report and FIR are not in support of the oral evidence of PW-2. As far as the quantum of compensation is concerned again this Court finds that a sum of Rs.40,000/- for loss of amenities and Rs.50,000/- for pain and suffering apart from 50% of the partial and permanent disability is on the higher side without any supporting documents. Since this Court

Rs.50,000/- is deducted towards contributory negligence and the award is fixed as Rs.2,00,000/-, which shall be paid with interest at the rate of 7.5% p.a., from the date of numbering the claim petition till the date of realisation.

11. From the record, this Court finds that, it has directed the Insurance Company to deposit the entire award amount with interest as a pre condition to grant stay. If any such amount is in deposit over and above the award amount as modified in this appeal, the same shall be withdrawn by the Insurance Company on filing appropriate petition.

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rpl

To

The Motor Accidents Claims Tribunal, Special Sub Court No.II,
Chennai.

Copy to:

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

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and

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RMP(17/05/2021)

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