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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.203 OF 2014

AND

M.P.NO.1 OF 2014

The Branch Manager,
National Insurance Company Ltd.,
37/2-E, Salem Main Road,
Mettur Dam, R.8.PB No.19,
Mettur.

.. Appellant/3rd Respondent

Vs.

1.Ganesha Moorthy

2.Rathinam

3.Kumar

.. Respondents/Petitioner/
Respondents 1 & 2

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.12.2012, made in M.C.O.P. No.1186 of 2010, on the file of the II Additional District & Sessions Court, (Motor Accident Claims Tribunal), Tiruppur.

For Appellant : Mr.D.Bhaskaran

For Respondents: Mr.Ma.P.Thangavel (For R1)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 21.12.2012, made in M.C.O.P. No.1186 of 2010, on the file of the II Additional District & Sessions Court, (Motor Accident Claims Tribunal), Tiruppur.

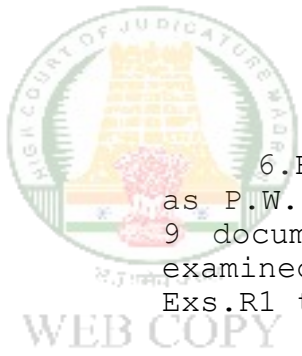


2.The appellant is the 3rd respondent in M.C.O.P. No.1186 of 2010, on the file of the II Additional District & Sessions Court, (Motor Accident Claims Tribunal), Tiruppur. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.07.2009.

3.According to the 1st respondent, on the date of accident, when he was riding his Motorcycle bearing Registration No.TN-40-Y-9672 near Senbagapudur Bus Stop at Sathyamangalam Kovai Main road, 2nd respondent, driver of a Lorry bearing Registration No. TN-28-V-6296 belonging to the 3rd respondent, drove the same in a rash and negligent manner without any signal, dashed on the backside of the Motorcycle driven by the 1st respondent and caused the accident. The accident occurred only due to rash and negligent driving by the 2nd respondent, driver of the Lorry. In the accident, the 1st respondent sustained grievous and multiple injuries all over the body and hence, he filed claim petition claiming compensation against the respondents 2, 3 and appellant as driver, owner and insurer of the vehicle.

4.The respondents 2 and 3 remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the 1st respondent, under the influence of alcohol, drove the Motorcycle in a rash and negligent manner and dashed against the stationary Lorry belonging to the 3rd respondent and caused the accident. FIR is lodged against the rider of the Motorcycle, 1st respondent herein, by the 2nd respondent, driver of the Lorry. The appellant is not liable to pay compensation to the 1st respondent, as he has driven the vehicle under the influence of alcohol, even as per the charge sheet, which is in violation of the Motor Vehicles Act and policy conditions. In any event, the 1st respondent has to prove that he possessed valid driving license at the time of accident to drive the vehicle and the 2nd respondent, driver of the Lorry also possessed valid driving license at the time of accident. The claim petition is bad for non joinder of owner and insurer of the Motorcycle driven by the 1st respondent. In any event, the 1st respondent has to prove his age, avocation and income, nature of injuries sustained, treatment taken by him, to claim compensation and prayed for dismissal of the claim petition.

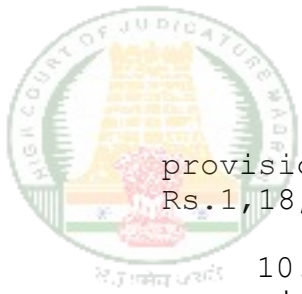


6. Before the Tribunal, the 1st respondent examined himself as P.W.1, examined two eye witnesses as P.W.2, P.W.3 and marked 9 documents as Exs.P1 to P9. The appellant-Insurance Company examined two witnesses as R.W.1, R.W.2 and marked 8 documents as Exs.R1 to R8.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2nd respondent, driver of the Lorry belonging to the 3rd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.4,15,104/- as compensation to the 1st respondent.

8. Against the said award dated 21.12.2012, made in M.C.O.P. No.1186 of 2010, the appellant - Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that the claim petition of the 1st respondent is not maintainable under the provisions of the Motor Vehicles Act, as the 1st respondent himself was a tort-feasor. The Hon'ble Apex Court has held that the claim petition filed under Section 163 A of the Motor Vehicles Act (hereinafter referred to as, 'the Act') also comes under fault liability. The 1st respondent admitted that he dashed on the backside of the parked Lorry. The Tribunal failed to properly appreciate the contents of FIR, wherein it has been mentioned that the Lorry was parked on the left hand side of the road. The accident has occurred due to negligence on the part of the 1st respondent and hence, appellant is not liable to pay compensation. The Tribunal failed to note that vicarious liability will arise only when the driver of the insured vehicle was at fault. The learned counsel appearing for the appellant, without prejudice to the above contention, further submitted that the disability assessed by P.W.3 - Doctor is exaggerated and assessment of P.W.3 - Doctor is against the medical science and guidelines. The multiplier method adopted by the Tribunal is not warranted. The Tribunal erred in equating the physical disability with loss of earning capacity. The Tribunal failed to note that disability assessed by the Doctor in respect of part of the body or particular part cannot be said to be the disability in respect of whole body. The 1st respondent filed claim petition under Section 163 A of the Act and he is not entitled to compensation more than the amounts specified in II Schedule. The 1st respondent is entitled to compensation only as per the structural formula in the II Schedule of the Act. The 1st respondent is entitled to only maximum sum of Rs.15,000/- towards medical expenses. The Tribunal, contrary to the



provisions of Motor Vehicles Act, erred in granting huge sum of Rs.1,18,000/- towards medical expenses.

10. In support of the above contentions, the learned counsel appearing for the appellant-Insurance Company relied on the judgments reported in:

(i) 2014 (1) TNMAC 848 [Branch Manager, New India Insurance Co. Ltd., Vs. Munirathinamma and others]

(ii) CDJ 2018 MHC 532 [Branch Manager, New India Insurance Co. Ltd., Vs. Natarajan and others]

(iii) 2015 ACJ 479 [Sarfaraz Khan Vs. Ramesh Kumar Kashyap and others]

(iv) CDJ 2016 Ker HC 421 [P. Janardhanan @ Babu and other Vs. P.K. Kunhiraman and another] and

(v) 2004 (1) TNMAC (SC) 193 [Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd]

11. Per contra, the learned counsel appearing for the 1st respondent contended that the 2nd respondent, driver of the Lorry parked the Lorry in the middle of the road without any signal. Due to the negligent parking of the Lorry by the 2nd respondent, without any signal, accident has occurred. The driver of the Lorry, 2nd respondent, taking advantage of the injuries sustained by the 1st respondent, lodged false complaint against the 1st respondent. The 1st respondent has filed claim petition under Section 163 A of the Act, even though the negligence on the part of the 2nd respondent is alleged and proved. The Tribunal considering the materials, has held that the accident has occurred only due to negligence on the part of the 2nd respondent, by giving valid reasons. The Tribunal considering both oral and documentary evidence, awarded compensation. The Tribunal has got power to award more compensation deviating from structural formula of II Schedule of the Act, towards medical expenses and relied on the following judgments:

(i) 2012 ACJ 2292 [Regional Manager, New India Assurance Co. Ltd., Vs. Vijay Balshiram Walunj and others]

(ii) 2018 ACJ 922 [United India Insurance Co. Ltd., Vs. Ved Parkash and another]



12. Heard learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the materials available on record.

13. It is the contention of the 1st respondent that the 2nd respondent parked the Lorry in the middle of the road without any signal. Due to the said negligent parking of the 2nd respondent, the 1st respondent dashed on the backside of the Lorry and accident occurred. To substantiate the said contention, the 1st respondent examined himself as P.W.1 and he deposed to that effect. On the other hand, it is the contention of the appellant that the 2nd respondent parked the Lorry on the left hand side of the road with parking light. The 1st respondent due to rash and negligent driving, dashed on the parked Lorry and was responsible for the accident. To substantiate the said contention, the 2nd respondent, driver of the Lorry was examined as R.W.2 and relied on FIR which was registered against the 1st respondent. From the materials on record, it is seen that the complaint was given by 2nd respondent. Naturally he will allege that accident occurred only due to the negligence on the part of other vehicle i.e., the 1st respondent. The Tribunal considering the evidence of P.W.1 and R.W.2, came to conclusion that the accident occurred due to negligent parking by the 2nd respondent, even though there was no necessity to prove the negligence on the part of the driver, as the 1st respondent has filed claim petition under Section 163 A of the Act. There is no error in the said finding of the Tribunal, warranting interference by this Court.

14. As far as the quantum of compensation is concerned, the Tribunal considering the evidence of P.W.3 Doctor with regard to nature of injuries and disability certificate, accepted the disability certificate issued by P.W.3 Doctor. The Tribunal, as per II Schedule of the Act, applied multiplier method and granted a sum of Rs.2,47,104/- towards loss of income, after fixing the disability as 38% and monthly income as Rs.3,300/-. The Tribunal failed to take note that the claim petition was filed by the 1st respondent under Section 163 A of the Act and as per II Schedule of the Act, the 1st respondent is entitled to only maximum sum of Rs.15,000/- towards medical expenses and Rs.5,000/- towards pain and suffering, if it is grievous injury. The Tribunal without considering the statutory provisions, has awarded excessive amounts towards medical expenses, pain and suffering and on other heads. The ratio in the judgments relied on by the learned counsel appearing for the appellant are squarely applicable to the facts of the present case. The judgments relied on by the learned counsel appearing for the 1st respondent does not advance the case of the 1st respondent. In view of the same, the sum of Rs.1,18,000/- awarded by the Tribunal towards medical expenses, Rs.10,000/- towards extra



nourishment, Rs.10,000/- towards discomfort and Rs.40,000/- awarded towards pain and suffering are set aside. The 1st respondent is entitled to only Rs.15,000/- towards medical expenses and Rs.5,000/- towards pain and suffering. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	2,47,104/-	2,47,104/-	Confirmed
2.	Pain and suffering	40,000/-	5,000/-	Reduced
3.	Medical expenses	1,18,000/-	15,000/-	Reduced
4.	Extra nourishment and transportation	10,000/-	-	Set aside
5.	Discomfort	10,000/-	-	Set aside
	Total	4,25,104/-	2,67,104/-	Reduced by Rs.1,58,000/-

Though the Tribunal has arrived at a sum of Rs.4,25,104/- as award amount, while calculating, the Tribunal erroneously mentioned the award amount as Rs.4,15,104/-.

15. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.4,15,104/- is modified to Rs.2,67,104/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited if any, 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.1186 of 2010. On such deposit, the 1st respondent is permitted to withdraw the award amount, now determined by this Court, along with interest and



costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw excess amount, lying in the credit of M.C.O.P. No.1186 of 2010, if the entire award amount has already been deposited. It is made clear that if the 1st respondent has already withdrawn the entire award amount, the appellant/Insurance Company is not entitled to recover the same from the 1st respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The II Additional District & Sessions Judge,
(Motor Accident Claims Tribunal),
Tiruppur.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.39376

C.M.A.No.203 of 2014

AK(CO)
CS/23/08/2021