

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2798 of 2017
and
C.M.P.No.15985 of 2017

Divisional Manager,
M/s.Cholamandalam MS General
Insurance Company Limited,
Chennai - 600 001 ... Appellant/II Respondent

Vs.

1.Anandan ... Ist Respondent/petitioner

2.R.Sakthivel ...II Respondent/Ist Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 19th January 2017, passed in M.C.O.P.No.583 of 2010, by the Hon'ble Motor Accidents Claims Tribunal, (In the Court of Principal Subordinate Judge), at Tiruvannamalai.

For Appellant : Mr.J.Michael Visuvasam

For Respondents: Mr.B.Jawahar

[For R1]

R2 - Notice dispensed with

JUDGMENT

The civil miscellaneous appeal is filed against the judgment and decree dated 19.01.2017 passed in M.C.O.P.No.583 of 2010.

2. The appeal is preferred by M/s.Cholamandalam MS General Insurance Company Limited, challenging the said judgment and decree, mainly on the ground that the 1st respondent/claimant had committed an act of negligence and therefore, he is not entitled for compensation and the Tribunal has erroneously awarded the compensation.

3. The parties are referred, as per the ranking of the Motor Accident Claims Tribunal. The facts in brief as narrated in the claim petition are as under:

The petitioner is aged about 30 years and he was hale and healthy at the time of the accident. He was contract labour at TNEB and he was earning not less than Rs.10,000/- per month and he was the only earning member of his family. The family members are depending on his only income. That on 12.06.2009 at about 12.15 P.M Near Puthupattai Bai Kollai at Polur to Kanji Main road, the accident occurred wherein the petitioner was riding his two wheeler bearing registration No.TN-25 J1168 along with one Ravikumar as a pillion rider from Kanji to Polur. While he came near to Puthupettai bai Kottai on the left side on the road, the first respondent's driver drove the vehicle mini auto bearing registration No.TN 25 J 4890 from the opposite direction in Polur to Kanji in a rash and negligent manner and dashed against two wheeler. Hence this petitioner was thrown out from his vehicle and got fracture over his left thie, hip and injured all over his body. The petitioner was taken to Pondicherry JIPMER hospital, and then he was taken to Government Hospital at Chennai, that he was taken to some private hospital and he spent more than Rs.2,50,000/- for treatment. The accident was solely due to the rash and negligent driving of the first respondent driver who drove the Mini Auto and the above said Mini Auto has been owned by the first respondent and the same has been insured with the second respondent. Hence the respondents 1 and 2 are jointly and severally liable to pay compensation to this petitioner. The SI of Police, Kadaladi Police Station had registered a case in Cr.No.174/08 U/S.279,337 IPC and the same is pending. Hence, the petitioner claims compensation under the various heads mentioned in the petition as follows:

1) Loss of earnings	Rs.50,000/-
2) Partial Loss of earnings	Rs.50,000/-
3) Medical Expenses and Transportation	Rs.2,00,000/-
4) Pain and Sufferings	Rs.1,00,000/-
5) For loss of earning power	Rs.4,50,000/-
6) Extra Nourishment	Rs.50,000/-
7) Permanent disability	Rs.10,00,000/-
Total compensation amount	:Rs.10,00,000/-

4. The 2nd respondent before the Tribunal, who is the appellant in the present appeal, filed a counter affidavit setting out the facts as extracted hereunder.

The allegations made in the petition are denied. The respondent does not admit any of the allegations contained in the petition save those that are specifically admitted herein and put the petitioner to strict proof of each and every one of them. The terms and conditions of the policy and violation of any conditions will disentitle the petitioner from claiming any relief against this respondent. The petitioner is putting to strict proof about the nature of the accident in the Tata ACE Mini Auto bearing registration No.TN 25 J 4890. The FIR has been mentioned that the Tata Ace Mini Auto bearing registration No.TN 25 J 4890 belonging to the 1st respondent proceeding from Polur to Kanji road when nearing Pudupettai pai kottai on the opposite side direction, the Baskaran Bus proceeding from Kanji to Polur at that time on the back side the bus the petitioner owner-cum-rider drove the motor cycle bearing registration No.TN 25 J1168 over took the bus and proceed without balance hit against the left side of the Tata Ace Mini Auto which was coming on the opposite direction and sustained injury. Therefore, there was no rash and negligence on the part of the driver of the Tata Ace Mini Auto. Further, the petition has been filed against. Accused vehicle which is petitioners Vehicle. As per the Police records, the petitioner owner-cum-rider is the accused. Charge sheet was filed against the petitioner. For the petitioner's own negligence this respondent is not liable to pay any compensation. The petitioner has to prove to insurance of the Tata Ace Mini Auto and also to prove the driving licence of the driver of the Tata Ace. The petitioner has not included the owner and insurance company of the motor cycle. For non joinder of necessary party, this petition has to be dismissed. The respondent does not admit the age, medical expenditure. The petitioner is put to strict proof of the same by documentary evidence. The injuries are simple in nature. There is no dislocation of work, no permanent disability. The petitioner has to prove the income. The petitioner claim is highly excessive and exaggerated. Hence, this petition is liable to be dismissed with costs.

5. The tribunal framed the issues as to whether the accident had occurred due to the rash and negligent driving of the 1st respondent drove the Mini Auto bearing Registration No.TN 25 J 4890; Whether the respondent is liable to pay compensation to the petitioner; What is the quantum of compensation, the petitioner is entitled to and what other relief.

6. The petitioner was examined as PW1 and PW2 were examined. Ex.P1 to Ex.P19 were marked. On the side of the respondent, R.W.1 was examined and no document were marked. With reference to the 1st point, whether the accident had occurred due to the rash and negligent driving of the 1st respondent in the claim petition, the tribunal adjudicated the issues by stating that the claimant was the rider of the two wheeler and the driver of the 1st respondent Tata Ace van came from the opposite direction and hit on the two wheeler, thereby the petitioner sustained injury. The claimant has stated that he had been ridden and was taking treatment at Government Hospital, Chennai. During the period, for which, the claimant was admitted in the hospital, FIR has been registered against the claimant and a charge sheet was laid. The claimant denied that he pleaded guilty of the offences charged and paid fine amount before the Judicial Magistrate Court. Thus, the judgment of the criminal Court would not bind on the claimant.

7. In the present case, the appellant / 2nd respondent Insurance company contended that the claimant himself has voluntarily appeared before the Judicial Magistrate and admitted his guilt and paid fine for the offences charged. Thus, he cannot turn around and say that he never pleaded guilty before the Judicial Magistrate Court. Thus, the claimant has committed an act of negligence and therefore, not entitled for any compensation. The Tribunal considered the evidences and more specifically during the cross examination of P.W.1, except the suggestions that the petitioner pleaded guilty before the criminal Court and paid fine no other facts were elicited during cross examination of PW1 and with reference to the negligence of the 1st respondent's driver or with regard to the petitioner's negligence.

8. The Tribunal has formed an opinion that the suggestion made by the Insurance company that the claimant pleaded guilty before the Criminal Court and paid fine is insufficient and further, facts ought to have been examined elicited by the Insurance company during cross examination. Again, the tribunal made a finding that the 2nd respondent/Insurance company failed to prove that the petitioner was negligent in driving the vehicle. Merely because the petitioner has pleaded before the Judicial Magistrate Court, the said fact cannot be taken advantage by the 2nd respondent and the proof of negligence cannot be presumed against the petitioner.

9. As far as the above finding is concerned, this Court is of the considered opinion that when the claimant himself produced the document with reference to the criminal case, wherein he pleaded guilty, there is no reason to take a different stand by the Tribunal in this regard. The Tribunal further found that during the relevant point of time, the claimant was admitted in the hospital and was taking treatment. It is brought to the notice of this Court that the claimant was admitted in the Hospital on two spells and during the second spell, he was admitted from 27.08.2008 to 02.09.2008 and pleaded guilty before the Tribunal on 07.11.2008. Therefore, there is a gap of more than one month between the date of discharge and the date of pleaded guilty before the Criminal Court of law. The Tribunal, with reference to the said point, shifted the burden on the side of the Insurance company with reference to the criminal Court proceedings.

10. This Court is of the considered opinion that the claimant at the first instance is bound to establish the factum regarding the accident and it is for the claimant to establish that he is entitled for compensation by filing document to establish that Insurance policy coverage is in force and he is entitled for compensation and he has not committed an act of negligence and all other aspects. The Insurance company, in the event of taking a defence, is bound to disprove the said statements, if any made by the claimants. This being the principles to be followed, when the claimant himself filed all the documents including the documents relating to the criminal court proceedings, wherein he pleaded guilty, which was marked as Documents on the side of the claimant, then there is no reason to arrive a conclusion by the Tribunal that the 2nd respondent Insurance company should elicit further evidence in this regard. When the documents related are filed by the claimant and the said documents are relied on by the respondent Insurance company, then the Tribunal ought not to have arrived a conclusion that the Insurance company, ought to have elicited more information during the cross examination. In this regard, the burden of proof cannot be shifted on the Insurance company.

11. The Tribunal has again to the extent of arriving a conclusion that merely pleading a guilty before the Judicial Magistrate Court cannot be taken as a advantage by the 2nd respondent and the proof of negligence cannot be presumed. As explained, the accident occurred in front of a bus, and the

claimant was riding two wheeler and while overtaking the bus, he dashed with the Tata Ace Van, which was coming in the opposite direction. Therefore, the bus, which was going in a right direction cannot be faulted with. The TATA Ace Van coming towards the opposite direction also cannot be found fault with. It is the claimant, who overtook the bus, which caused the accident. While overtaking the Bus, the judgment made by the claimant was appears to be wrong and which resulted in accident. While driving a vehicle, in the event of failure of judgment, accidents are happening. The decisions taken for overtaking another vehicle is to be made cautiously and in a calculative manner. Error in judgment resulted in accident is undoubtedly negligent on the part of the rider of the vehicle, who has overtaken the other vehicle. Normally, the vehicles are supposed to be driven in a lane and overtaking though not prohibited the drivers of the vehicle must be cautious, while overtaking the other officials.

12. In the present case, the facts placed before this Court reveals that the claimant himself has overtaken the Bus and at that time, he dashed with the TATA Ace Van and therefore, it is to be construed that the judgment made by the claimant for overtaking, went wrong and the accident occurred.

13. This being the facts and circumstances, it is for the claimant to establish at the first instance, he has not committed any guilty. Once, the claimant committed a guilt before the Criminal Court of Law and paid fine, the other possible circumstances that he was taking treatment and he was unable to move from one place to another place cannot be accepted at all. Even in such circumstances, it is brought to the notice of this Court that the claimant was discharged from the Hospital on 02.09.2008 and he pleaded guilty before the Criminal Court of law on 07.11.2008.

14. The learned counsel appearing on behalf of the respondent claimant reiterated that the injury sustained by the claimant was grievous in nature and more specifically, hip fracture. Therefore, he was not in a position to move from one place to another place and with reference to the criminal proceedings, he was impersonated by some other person. However, the claimant has sent a complaint to the Superintendent of Police in the year 2013 and the said complaint was also not pursued thereafter. The accident occurred in the year 2008 and he pleaded guilty on 07.11.2008 and the complaint was sent to

the post on 14.03.2013 and the said complaint also not pursued by the claimant. This being the facts, the story of the claimant, at this length of time, he has given complaint to the Superintendent of Police cannot be taken into consideration for the purpose of exonerating the claimant from the act of negligence.

15. The Tribunal has taken an erroneous view by shifting the burden on the Insurance company. The claimant, at the first instance, has to establish his case in all respects beyond any pale of doubt. Therefore, the respondents are entitled to defend the allegations or statements. In the present case, all the documents filed by the claimant himself was relied upon by the Insurance company.

16. This being the factum, this Court is of the considered opinion that the findings in this regard regarding the negligence on the part of the claimant was erroneously decided by the Tribunal. As far as the nature of injuries is concerned, it is not in dispute. However, when the accident occurred on account of the negligence of the 1st respondent/claimant himself, then the Insurance company is not liable to pay compensation and under these circumstances, the Tribunal has committed a perversity.

17. In view of the facts and circumstances as stated above, the judgment and decree passed in M.C.O.P.No.583 of 2010 dated 19.01.2017 is quashed and C.M.A.No.2798 of 2017 stands allowed.

18. The appellant/Insurance Company, if deposited any amount, they are at liberty to file an appropriate application for refund of the said amount with accrued interest.

19. No costs. Connected miscellaneous petition is closed.

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Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

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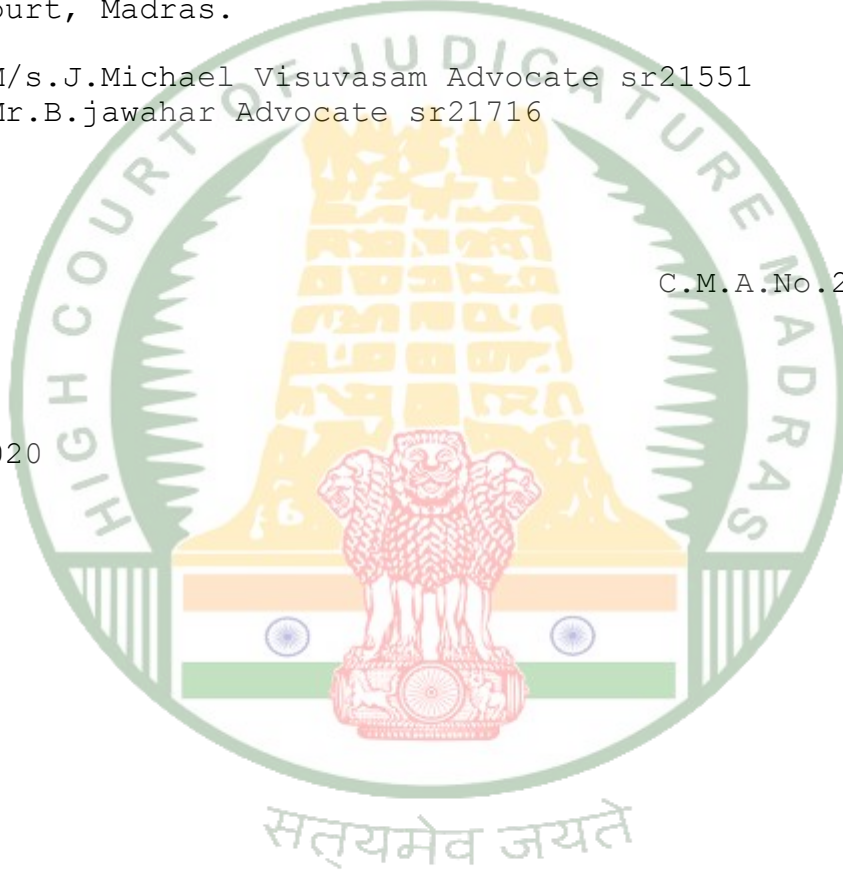
1.The Court of Principal Subordinate Judge
(Motor Accidents Claims Tribunal),
Tiruvannamalai.

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

+1 cc to M/s.J.Michael Visuvasam Advocate sr21551
+1 cc to Mr.B.jawahar Advocate sr21716

C.M.A.No.2798 of 2017

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