



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.12.2020

Delivered on : 21.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

WEB COPY

C.M.A. (MD)Nos.1038 and 1039 of 2010

CMA(MD)No.1038/2010

Subash @ Subash Chandrabose ... Appellant / Petitioner

Vs.

1.Srinivasan

2.The Branch Manager,
National Insurance Company Ltd.,
4132, Keela Raja Veethi,
Pudukkottai.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 15.04.2010 made in M.C.O.P.No.23 of 2004 on the file of the M.A.C.T. - Additional District cum Sessions Court cum Special Court (EC Act), Pudukkottai.

For Appellant : Mr.P.Ganapathi Subramanian
For R2 : Mr.D.Sivaraman
For R1 : No appearance

CMA(MD)No.1039/2010

Dinesh ... Appellant / Petitioner

Vs.

1.Srinivasan

2.The Branch Manager,
National Insurance Company Ltd.,
4132, Keela Raja Veethi,
Pudukkottai.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 15.04.2010 made in M.C.O.P.No.824 of 2005 on the file of the M.A.C.T. - Additional District cum Sessions Court cum Special Court (EC Act), Pudukkottai.

For Appellant : Mr.P.Ganapathi Subramanian
For R2 : Mr.D.Sivaraman
For R1 : No appearance



COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the judgment and decree dated 15.04.2010 made in M.C.O.P.Nos.23 of 2004 and 824 of 2005 on the file of the M.A.C.T. - Additional District cum Sessions Court cum Special Court (EC Act), Pudukkottai.

2. The appellants/ claimants filed a claim petitions in M.C.O.P.Nos.23 of 2004 and 824 of 2005 before the M.A.C.T. - Additional District cum Sessions Court cum Special Court (EC Act), Pudukkottai, claiming compensation for the injuries sustained by them. That petitions were allowed and awarded a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the appellant in CMA(MD)No.1038 of 2010 and a sum of Rs.30,000/- (Rupees Thirty Thousand only) to the appellant in CMA(MD)No.1039 of 2010, by its common judgment, dated 15.04.2010. Against the award the appellants filed these Civil Miscellaneous Appeals for enhancement of the award passed by the Tribunal.

3. It is the case of the claimant / appellant before the Tribunal that on 02.01.2002, at about 10.00 p.m., in the night, both the appellants / claimants after finishing their work, returning their bi-cycle, which was driving by one Subash @ Subash Chandrabose, south to north direction and at that time, the first respondent's vehicle driver came in the opposite direction in a rash and negligent manner by driver two wheeler and dashed against the appellants / petitioners. As a result of which, both the petitioners fell down and sustained injuries. Both were admitted in Government Hospital, Pudukkottai and the petitioner / Dinesh was an in-patient from 02.01.2002 to 12.01.2002 and thereafter, he was treated as out-patient, because of the accident injuries, he is not able to continue his job and both the claimants seeks compensation for a sum of Rs.5,00,000/-.

4. The case of the first respondent is that the accident took place only due to the rash and negligent riding on the part of the petitioners. The case of the second respondent is that it is denied that the vehicle belongs to the first respondent was involved in the occurrence. There is confusion with regard to the identity of the vehicle involved. The other facts are denied.

5. With the pleadings, the Tribunal has taken a joint trial, on the side of the claimants, two witnesses were examined, who were the petitioners, as P.W.1 and P.W.2 and 8 documents were marked as EX.P.1 to Ex.P.8. On the side of the respondent, two witnesses were examined as R.W.1 and R.W.2 and one document was marked Ex.R1.

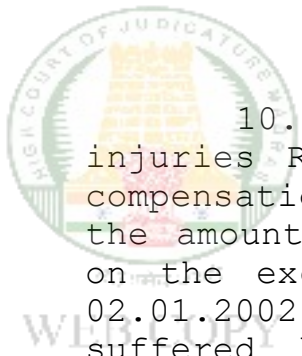


6. On the completion of the enquiry, the Tribunal came to the conclusion that the accident that has been stated in the petition took place involving the first respondent and his vehicle and it has also come to the conclusion that only rash and negligent riding on the part of the first respondent the occurrence took place and is liable to pay compensation on the ground that he did not own proper driving licence for riding the two wheeler. With regard to compensation of the petitioner / Subash @ Subash Chandrabose in M.C.O.P.No.23 of 2004 awarded a total compensation of Rs.25,000/- (Rupees Twenty Five Thousand only) and for the petitioner in M.C.O.P.No.824 of 2005 viz., Dinesh awarded a total compensation of Rs.30,000/- (Rupees Thirty Thousand only) with 7.5% interest and costs. Against the second respondent / Insurance Companies both the petitions were dismissed.

7. Challenging the quantum and dismissal of the petition against the second respondent, both the petitioners preferred separate Appeals.

8. Even a strong objection was made by the Insurance Company viz., the second respondent herein, in both the appeals, before the Tribunal on the ground that the first respondent vehicle was not involved in the accident, during the arguments, no such ground was raised by the Insurance Company . So finding of the Tribunal on this respect is not under challenge.

9. The only challenge that is made in both the appeals, is the quantum of compensation as mentioned earlier. The Tribunal awarded Rs.25,000/- (Rupees Twenty Five Thousand only) as a total compensation for the petitioner, viz., Subash @ Subash Chandrabose in M.C.O.P.No.23 of 2004 and awarded Rs.30,000/- (Rupees Thirty Thousand only) as a total compensation for the petitioner, viz., Dinesh in M.C.O.P.No.824 of 2005. Before the Tribunal, they did not examine any witness to show their disability, because of the accidental injuries, so the question of disability will not arise. Ex.P4, is the wound certificate of Subash @ Subash Chandrabose, in the wound certificate (I) lacerated injury on the left great toe measuring 2 X 1 cm (ii) 2 and 3 upper teeth were found shaking and other injury are found to be simple and 2nd injuries are found to be grievous in nature. It is seen that the petitioners suffered lacerated injury and shaking of second and third teeth. So when there is shaking of the teeth of the injury is grievous. So, on this ground no fault can be found on the Tribunal's finding. No disability as mentioned already was noticed. So for both the injuries, the Tribunal awarded Rs.25,000/- (Rupees Twenty Five Thousand only) including medical treatment, pain and sufferings, etc.



10. According to the insurance company, even for grievous injuries Rs.5,000/- (Rupees Five Thousand only) is mentioned as compensation for pain and sufferings in the second schedule. So the amount of Rs.25,000/- (Rupees Twenty Five Thousand only) is on the excessive side, but, the petitioner was in-patient from 02.01.2002 to 04.01.2002. Considering the nature of the injuries suffered by the petitioners, the assessment of compensation inclusive of all at Rs.25,000/- (Rupees Twenty Five Thousand only) is considered to be fair and reasonable. But the second schedule has now become redundant due to the passage of time and new amendment has been brought. A contention on the part of the appellants side that it must be increased cannot be accepted in the absence of any disability. It is usual in those days when the enquiry was conducted to award Rs.5,000/- as compensation for loss of one tooth.

11. Hence, in such circumstances, the award of Rs.25,000/- as compensation fixed by the Tribunal is just and reasonable and no interference is called for.

12. In respect of M.C.O.P.No.824 of 2005, the petitioner viz., Dinesh was an in-patient from 02.01.2002 to 20.01.2002, which is evident from Ex.P5. Ex.P8 is the wound certificate of this petitioner and it is seen that there is the loss of two teeth and another teeth was found shaking abrasion over lower mandible area. Since two teeth were lost and one tooth was found shaking these injuries are found to be grievous and another abrasion was found to be simple. So, considering the loss of teeth and shaking of teeth, the Tribunal has awarded Rs.30,000/- (Rupees Thirty Thousand only) inclusive of pain and sufferings, transport, extra nourishment, etc. For this also there is no reason to differ. So, the arguments on the side of the appellant that it must be increased cannot be accepted. So the award of compensation in Both the appeals are confirmed.

13. The next point is liability of the Insurance Company, to pay the compensation on behalf of the first respondent. There is a finding by the Tribunal that the first respondent was not owning a proper driving licence at the time of riding the two wheeler. According to the appellant, as per the judgment of the Hon'ble Supreme Court reported **in 2009 (1) TNMAC 242 in Civil Appeal No.5721 of 2008**, a person holding a light motor vehicle is eligible to drive commercial vehicle without any proper endorsement so, that analogy can also be applied to this case and since the first respondent was owning light motor vehicle and as well as heavy motor vehicle licence, he is eligible to drive two wheeler also and when the vehicle covered in insurance, the absence of the driving licence for riding two wheeler should not be given any importance. therefore, the Insurance Company must



be liable to pay the compensation. Such argument cannot be accepted. The licences have been categorised depending upon the category of the vehicle. So the argument on the side of the appellant that the second respondent is liable to pay the compensation cannot be accepted. Since there is a violation of the policy condition by the first respondent, the petitioner being the third party should not be made to suffer because of the policy violations by the insured person. So, the order that can be passed is that to direct the second respondent herein to pay the amount on behalf of the first respondent and recover the same from the first respondent. Both the Civil Miscellaneous Appeals are partly allowed. Quantum assessed by the Tribunal are confirmed. The second respondent / Insurance Company is directed to deposit the award amount with interest and costs within a period of two months from the date of receipt of a copy of this order and recover the same from the first respondent. On such deposit being made, the Tribunal may permit both the appellants / claimants to withdraw their respective amounts with interest and costs immediately, after filing proper petition before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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To

The Additional District Judge cum
Sessions Judge cum Special Court
under EC Act,
Motor Accident Claims Tribunal,
Pudukkottai.

Copy to

The Section Officer-2 copies
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc to Mr.P.Ganapathi Subramanian , Advocate SR.No.27128

order made in
C.M.A. (MD) Nos.1038 and 1039 of 2010
21.12.2020

KM (11.02.2021) 5P 5C

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