



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.12.2020

Delivered on : 21. 12.2020

CORAM:

THE HONOURABLE **MR.JUSTICE G.ILANGOVAN**

C.M.A. (MD)No.294 of 2010

J.Rajkumar

... Appellant / Petitioner

Vs.

1.R.Rajasekar

2.The United India Insurance Company Ltd.,
Through it's the Divisional Manager,
Thanjavur, Thanjavur District.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the award and ex-order passed in M.C.O.P.No.427 of 2004, dated 22.02.2006 on the file of the Motor Accident Claims Tribunal / the Principal Sub Court, Thanjavur District by allowing the Civil Miscellaneous Appeal.

For Appellant : Mr.P.Subburaj

For R1 : No appearance

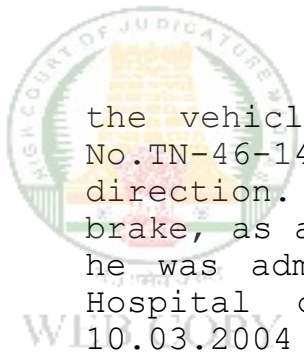
For R2 : Mr.J.S.Murali

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award and ex order dated 22.02.2006 passed in M.C.O.P.No.427 of 2004, by the Motor Accident Claims Tribunal / the Principal Sub Court, Thanjavur District.

2. The appellant / claimant filed a claim petition in M.C.O.P.No.427 of 2004, before the Motor Accident Claims Tribunal / the Principal Sub Court, Thanjavur District, claiming a compensation amount of Rs.4,00,000/- (Rupees Four Lakhs only) for the injuries sustained by him. That petition was dismissed by the Tribunal. Against the order of dismissal, the appellant filed this Civil Miscellaneous Appeal.

3. The case of the appellant / claimant before the Tribunal is that the appellant / petitioner was travelling as a pillion rider in



the vehicle belongs to the first respondent bearing Registration No.TN-46-1404 on Tanjavur Srinivasapuram Road, from south to north direction. At that time, the first respondent suddenly applied the brake, as a result of which, he fell down and sustained injuries and he was admitted in the hospital, viz., Thanjavur Medical College Hospital on 10.03.2004 and took treatment as inpatient from 10.03.2004 to 23.03.2004. Due to the accidental injuries, he was not in a position to continue his work. So, he claimed compensation of Rs.4,00,000/- (Rupees Four Lakhs only).

4. The first respondent remained ex-parte. The second respondent, viz., Insurance Company contended that the first respondent had not owned proper driving licence and the insurance was not in force. The occurrence was also denied.

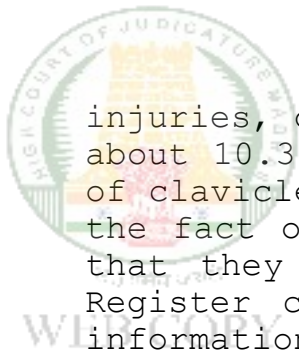
5. In the enquiry, on the side of the appellant/ claimant, two witnesses were examined as P.W.1 and P.W.2 and seven documents marked as Ex.P.1 to P.7. On the side of the respondents, no witness was examined and no document marked.

6. On completion of enquiry, the Tribunal came to the conclusion that the occurrence has not been properly proved and so the appellant/ claimant is not entitled for any compensation from the respondents and accordingly, dismissed the same. Against which, the appellant / claimant preferred this Civil Miscellaneous Appeal.

7. It is unfortunate that the Tribunal has adopted the criminal jurisprudence to this case to record a finding with regard to the very occurrence. The Tribunal went to the extent of saying that the very occurrence is doubtful, though there is no evidence on the side of the Insurance Company. It has doubted the information furnished in the discharge summary of the Government Hospital and also the First Information Report on the ground of delay. In Motor Accident cases, it is the probability theory and not proof beyond reasonable doubt is to be adopted. The appellant / claimant is a Police Officer working in the Police Department. He has stated the reason for not giving the complaint immediately that the first respondent is his friend and he was a pillion rider at the time of the accident in the two wheeler rode by him. Naturally, he would have hesitated to give the complaint immediately to maintain his friendship. This is quite natural and usual in human conduct. That cannot be a reason to disbelieve the very nature of the occurrence. The appellant / claimant is a responsible Police Officer. It cannot be belived that such a responsible man has indulged in forging occurrence to claim compensation. So, this Court do not approve the approach of the Tribunal.

8. The date of occurrence is stated to be 09.03.2004, at about 10.00 p.m., in the night. He was admitted in the hospital, on 10.03.2004, in Thanjavur Medical College Hospital. It is recorded

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injuries, due to accidental fall from a two wheeler on 09.03.2004 at about 10.30 pm at Srinivasapuram, Thanjavur. He suffered a fracture of clavicle bone on the left shoulder and other simple injuries. So, the fact of injury and admission in the Hospital cannot be doubted that they are forged document. The non-marking of the Accident Register cannot create any doubt over the injuries suffered. The information furnished by the appellant / claimant at the time admission in the hospital can be relied to show that he sustained injuries in the motor accident that took place on the previous night. He was discharged on 22.03.2004 and during the inpatient time, on 13.03.2004, he gave the complaint. Based on that, the case was registered. I find that these facts are enough to conclude that the accident really took place as stated by him.

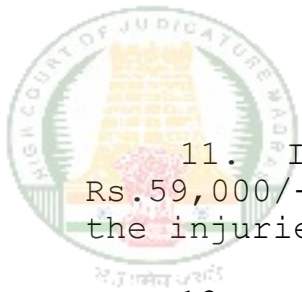
9. The next point is, whether the accident took place involving the first respondent?

In the First Information Report, it is stated that the appellant / claimant was a pillion rider in the two wheeler drove by the first respondent. While he was riding the same, the accident took place when a dog suddenly crossed the road and first respondent hit it and so, the accident occurred. The appellant / claimant need not implicate the first respondent and his vehicle in the accident falsely. There is no contra evidence from the second respondent. It is usual for the Insurance Companies to appoint investigators to find the truth if any doubt arises in such cases. But, no step appears to have been taken. So, believing the course of events, this Court records a finding that the accident took place involving the first respondent and his vehicle and from the very nature of the occurrence, it is concluded that the accident occurred due to the rash and negligence of the first respondent. Ex.P.3, shows it is a comprehensive policy. So, the pillion rider is also covered.

Assessment of compensation:

10. As mentioned above, there was a fracture on the left clavicle bone. P.W. 2 is the Doctor, who assessed the disability and according to him, movement is restricted in the left shoulder region, due to the malunion of the bones. He assessed the partial permanent disability at 22%. The appellant / claimant was working as a Head Constable, at the time of the accident. So, the question of loss of working performance, functional disability and income loss do not arise. So, he is entitled for the inconvenience and discomfort of movement on the percentage basis.

For 22 % at the rate of Rs 2000/-	- Rs.44,000.
Pain and suffering since he was in the	
Hospital for 12 days	- Rs.10,000.
Extra nourishment	- Rs.5,000.
Total compensation	- Rs.59,000.



11. In this, the appellant / claimant is entitled for Rs.59,000/- (Rupees Fifty Nine Thousand only) as compensation for the injuries sustained by him.

12. In the result, this Civil Miscellaneous Appeal is allowed and the order passed by the Tribunal is set aside. The appellant / claimant is entitled for Rs.59,000/- (Rupees Fifty Nine Thousand only) as compensation with interest at the rate of 7.5% p.a., and costs from the date of filing of the claim Petition till the date of realization from the respondents, who are responsible jointly or severally. The second respondent /Insurance company is directed to deposit the award amount with accrued interest and costs within a period of two months from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal may permit the appellant / claimant to withdraw the same with interest and costs immediately, after filing proper petition before the Tribunal.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

Ls
To

1.The Principal Subordinate Judge,
Motor Accident Claims Tribunal
Thanjavur District.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies).

+1cc to Mr.J.S.Murali, Advocate Sr.No.27113

+1cc to Mr.P.Subburaj, Advocate Sr.No.26773

order
made in
C.M.A.(MD)No.294 of 2010

21.12.2020

SSS (CO)

NR (08/02/2021) 4P : 6C

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