



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2020

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

C.M.A.(MD)No.317 of 2018

and

C.M.P.(MD)No.4270 of 2018

The Branch Manager,
United India Insurance Company Limited,
Ramanathapuram. ... Appellant /2nd Respondent

Vs.

1.T.Saravanan ... 1st Respondent / petitioner

2.K.Ramesh ... 2nd Respondent / 1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section173 of Motor Vehicles Act, against the award and decree dated 06.12.2017 made in M.C.O.P.No.33 of 2013 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Ramanathapuram.

For Appellant : Mr.I.Suthakaran

For R1 : Mr.H.Velavadhas

For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 06.12.2017 made in M.C.O.P.No.33 of 2013, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Ramanathapuram.

2. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original proceedings. The first respondent / claimant filed a petition before the Motor Accident Claims Tribunal in M.C.O.P.No.33 of 2013, seeking compensation for the injuries sustained by him in the accident, dated 15.11.2012. The Tribunal awarded a sum of Rs.6,97,877/- with interest at the rate of 9%. Against which, the appellant preferred this Civil Miscellaneous Appeal.



3. The case of the claimant in M.C.O.P.No.33 of 2013 is as follows:

On 15.04.2012, the petitioner was riding a two wheeler, bearing Registration No. TN 01 AP 9645 to supervise the building work of the first respondent. After supervising the building work, the claimant was returning back at about 2.00 pm along the Rameswaram National Highways on left side of the road, observing all the road Rules. The offending vehicle which was driven in a rash and negligent manner, came from the backside of the petitioner and dashed against the vehicle. Due to that accident, the petitioner sustained injuries on the backside of the hip area and in the left leg. Thereafter, the petitioner was admitted in Coimbatore Ganga Hospital and was treated as inpatient for 38 days and subsequently, he took treatment as out patient. The petitioner has undergone nine operations and plates were affixed in the hip and in the left leg of the petitioner. A case in Crime No.204 of 2012 was registered under Section 229 and 337 I.P.C. Since the accident took place at the time of employment, both the first and second respondents are liable to pay compensation to the petitioner.

4. Brief substance of the counter of the first respondent / Ramesh, in M.C.O.P.No.33 of 2013 is as follows:

The first respondent is not aware of the accident. Without identifying the vehicle which, hit and run the petitioner, the petitioner filed a petition against the first respondent, which is not acceptable. The petitioner has to prove that he was having valid driving licence at the time of accident. Since the vehicle is insured with the second respondent, the petition has to be dismissed as against the first respondent.

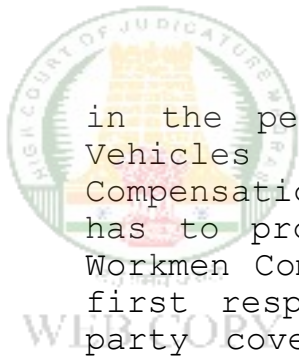
5. Brief substance of the counter of the second respondent / Insurance Company, in M.C.O.P.No.33 of 2013 is as follows:

The second respondent is the insurer of the first respondent. The age, income and nature of injury is to be proved by the petitioner. The claim of the petitioner is not acceptable, because there is no disability to the petitioner.

6. Two witnesses were examined [P.W.1 and P.W.2] and eleven documents were marked [Exs.P1 to P.11] on the side of the petitioner. Three witnesses were examined [R.W.1 to R.W.3] and two documents were marked [Exs.R1 and R.2] on the side of the respondents.

7. After considering both sides, the Tribunal awarded compensation to the claimant. Against which, the appellant preferred this Civil Miscellaneous Appeal.

8. On the side of the appellant, it is stated that it is a clear case of "hit and run". The vehicle, which hit the claimant's
<https://hcservicescourts.mca.gov.in/hcservices/> traced out and the hit and run incident was admitted



in the petition itself. This award is a nullity as a Motor Vehicles Claims Tribunal passed an award under the Workmen Compensation Act. The claimant can choose only one Tribunal and he has to proceed either under the Motor Vehicles Act or under the Workmen Compensation Act. The claimant borrowed the vehicle of the first respondent and met with an accident and there is no third party coverage in the insurance and the award under the Motor Vehicles Act is not possible. The petitioner has to approach the Workmen Compensation Commissioner, to get compensation under the Workmen Compensation Act.

9. On the side of the appellant, it is stated that the accident said to have taken place on 15.04.2012 at Ramadhapuram but the claimant was admitted in Ganga Hospital, Coimbatore, on the same date and the accident was reported to the police only on 17.12.2012 and there is a suspicion over the place of accident. It is further stated that the vehicle, which is said to have hit the claimant's vehicle was not traced out and it is only a hit and run case, where the remedy is only through Government Forum.

10. On the side of the appellant, it is further stated that the Doctor, who gave treatment was not able to prove the disability at 65% and the medical bills were not proved and the Tribunal is wrong in fixing the disability at 60% and in accepting the medical bill to the tune of Rs.4,26,029/- and to award transport expenses to the tune of Rs.70,000/- and that under the Workmen Compensation Act the claimant must be examined by a qualified Doctor to prove his disability and that under Section 2(1) of Workmen Compensation Act, the examination of the qualified Doctor is necessary and hence, the award has to be set aside.

11. On the side of the first respondent, it is stated that the claimant is a Civil Engineer and the M.C.O.P. was filed under Section 163-A, the Doctor has fixed the disability as 65%. A judgment of the Hon'ble Supreme Court published in **CDJ 2013 SC 955 [United India Insurance Company Ltd Vs. Sunisl Kumar and another]** is cited. It is further stated that though the claimant claims Rs.10 lakhs as compensation, the Tribunal has awarded only Rs.6,97,029/- and that the compensation has to be enhanced.

12. On the side of the appellant, it is stated that the appeal filed by the claimant for enhancement of the compensation was already dismissed for default. The first respondent / claimant is entitled only for a sum of Rs.2,50,000/- for his disability for hit and run case. It is further stated that the petition was only filed under Section 163 (A) of the Motor Vehicles Act, but, in the award Sections 140, 166 and 163 (A) were included, the respondent cannot claim compensation under the Workmen Compensation Act, he has filed only a petition under Section 163 (A) of the Motor Vehicles Act. The claimant has to file a petition under the Workmen Compensation



Act based on the contract between the employer and the insurance Company, but, the claimant is on a different footing before a wrong Forum and the award was wrongly granted. The quantum awarded is excessive and the interest also is excessive and the remedy available to the petitioner / claimant is only before the Workmen Compensation Forum and not before the Motor Claims Accidents Tribunal.

13. On the side of the first respondent, it is stated that the claim petition was under Section 163 (A) of the Motor Vehicle Act, the disability was fixed under the Workmen Compensation Act and the claim of the petitioner in M.C.O.P is not affected. Doctor was examined and the disability of 60% was proved. A judgment of the Hon'ble Supreme Court published in CDJ 213 SC 955 cited, wherein the Supreme Court has held that once it was established that the death or permanent disablement acquired in the accident and if the offending vehicle is insured, the Insurance Company is liable to pay compensation on behalf of the owner, which is a statutory obligation.

14. It is seen that in the citation referred by the respondent, the Apex Court has not given any finding and referred the matter before the Larger Bench of the Hon'ble Supreme Court headed by the Hon'ble Chief Justice of India. In the above circumstances, the citation referred supra is not applicable to the facts of the present case.

15. It is seen that the claimant filed a petition under Section 163 (A) of the Motor Vehicles Act and the claimant is said to have been an employee of the first respondent. It is stated that the accident took place during the course of employment and while passing the award the Tribunal has observed that the claimant is an employee of the first respondent and he is entitled to claim compensation under the Workmen Compensation Act and give a finding that the second respondent / appellant as the insurer of the first respondent / second respondent herein, is liable to pay compensation to the claimant / first respondent herein. It is seen that there is an apparent error in the findings of the Tribunal. The Tribunal is quite confused whether the award of compensation is to be given under the Workmen Compensation Act or under the Motor Vehicles Act. The findings in issue No.2 is that the first respondent is liable to pay compensation as the employer of the claimant and not as the owner of the vehicle.

16. The Tribunal make contrary observations in Paragraph Nos.10, 11 and 15, regarding the relationship of employer and employee between the first and second respondents and has observed that as the employer of the claimant, the second respondent is liable to pay compensation. Whether the award was passed under the Motor Vehicles Act or under the Motor Vehicles Act is not stated in the order of the Tribunal. The Tribunal has



failed to consider the defence raised by the appellant.

17. In the above circumstances, liberty is given to the first respondent herein / claimant to approach the Workmen Compensation Tribunal without any question on limitation. If the first respondent / claimant filed a petition, the Workmen Compensation Tribunal, shall condone the delay.

18. With the above observation, this Civil Miscellaneous Appeal is allowed and the award and decree dated 06.12.2017 made in M.C.O.P.No.33 of 2013 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Ramanathapuram, is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ls

To

The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Ramanathapuram.

Copy to:

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

C.M.A. (MD) No.317 of 2018
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JMN(11.03.2020) 5P : 4C