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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.12.2020

Pronounced on : 27.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2400 of 2012

Pachiammal
W/o.Alagamuthu

.. Appellant/Petitioner

Vs.

1.A.Gunasekaran
S/o.Arumugam

2.The United India Insurance Company Limited
City Branch, Salem -1.

3.C.Anandavel
4.K.Krishnamoorthy
S/o.Kanagasabapathy
(RR 1,3,4 set exparte)

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.01.2012 made in M.C.O.P.No.942 of 2005 on the file of the Motor Accident Claims Tribunal, First Additional Sub-Court, Salem.

For Appellant : Mr.K.Kuppusamy

For R2 : Mr.M.J.Vijayaraghavan

RR 1, 3 & 4 : Exparte

JUDGMENT

(The case has been heard through video conference)

This appeal has been directed against the award, dated 25.01.2012 of the Motor Accident Claims Tribunal, First Additional Sub-Court, Salem in M.C.O.P.No.942 of 2005.



The brief facts relevant to the accident which are as follows:

3.As per his submissions, the injured claimant had preferred a complaint to the Police regarding the manner of the accident and the vehicle involved in the accident. The F.I.R clearly stated that the motorcycle bearing Registration No.TN-30-B-1352 had caused the accident resulting in her injuries. F.I.R was registered by the Traffic Investigation Wing, Salem City Police. Subsequently, the Police had laid a charge sheet against the owner of the motorcycle bearing a different Registration No.TN-27-A-4498, before the Court of the learned Judicial Magistrate. Also the Police had taken steps in such a manner that the owner of the two wheeler bearing Registration No.TN-27-A-4498 had pleaded guilty to the charge before the Court of the learned Judicial Magistrate, Salem. The learned counsel for the appellant had reiterated those facts in the claim petition and had referred to the documents marked as Exs.A-1 to A-9. Ex.A-1 is the F.I.R, Ex.A-2 is the wound certificate, Ex.A-3 is the series of the Medical bills, Ex.A-4 is the complaint preferred by the claimant in the Court of learned Chief Judicial Magistrate, Salem Ex.A-5 is the Motor Vehicle Inspection Report regarding the two wheeler bearing Registration No.TN-27-A-4498, Ex.A-6 is the copy of the complaint preferred by Advocate for the claimant to the



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Commissioner of Police, Salem City Police. Ex.A-7 is the copy of the complaint given by the Counsel for the claimant to the Deputy Inspector of General of Police, Salem Range, Ex.A-8 is the X-ray, Ex.A-9 is the disability certificate issued by the Doctor who had assessed the disability of the claimant and deposed evidence as P.W.2. As per the contention of the learned counsel for the appellant submitted that the learned Tribunal failed to appreciate the evidence let in before the Tribunal and had dismissed the claimant's petition for just compensation on the ground that the registration number of the vehicle stated by the claimant is not the vehicle involved in the accident. The claimant is the competent person to speak about the same. The Police had investigated the case and had subsequently involved vehicle bearing a different registration number. Also the Police had prevailed upon the owner of the said vehicle to plead guilty, thereby defeating the claim of the claimant/injured victim of the accident behind her back. As a citizen of this Country, the person who preferred complaint does not have control over the investigation. Therefore, for the lapses or motive on the part of the investigation Officer, the victim of the accident cannot be punished. The victim of the accident, the claimant had clearly stated the registration number of the vehicle involved in the accident, resulting in her injuries.

4.The Tribunal conducts enquiry and in the enquiry, the evidence gathered is assessed and based on which just compensation is granted. The claimant had fairly furnished all the documents from her part Ex.A-1 to Ex.A-9, whereas the Tribunal had looked into the charge sheet filed before the learned Judicial Magistrate by the Investigation Officer and the fact of pleading guilty voluntarily by the owner of the said vehicle before the learned Judicial Magistrate was taken as evidence. The evidence before the Trial Court or the finding of the Criminal Court does not have a bearing on the Motor Accident Claims Tribunal. The Tribunal conducts independent enquiry and the enquiry is a summary procedure. Under those circumstances, when there are rulings of this Court and Hon'ble Supreme Court that a finding given by a Criminal Court has no bearing on the Tribunal. The Tribunal rejected the evidence of the claimant and dismissed the claim petition on the ground that the vehicle involved in the accident was not the vehicle mentioned by the claimant, thereby denied the just compensation to the claimant. Therefore, the learned counsel for the appellant submitted that the learned counsel who appeared for the claimant had preferred complaint to the learned Chief Judicial Magistrate, Salem, under Ex.A-4, to the Commissioner of Police, Salem City Police and to the Deputy Inspector General, Salem Range under Ex.A-7 regarding the lapses on the part of the Investigation Officer and on her furnishing the same before the Tribunal for proper appreciation. As a citizen of the Country, the claimant can do only that much and not beyond that. The Court can draw presumption based on the



complaint preferred by the claimant regarding the action of the Investigating Officer in changing the number of the vehicle involved in the accident by giving a different vehicle and different number instead of the vehicle involved in the accident.

5.The Tribunal had enough powers to grant appropriate relief based on the evidence and the claimant had proved her case, whereas the learned Tribunal had rejected her evidence stating that the vehicle involved is not the vehicle mentioned by the injured/claimant and thereby dismissed the claim petition. Aggrieved by the same, the claimant had preferred this appeal.

6.The learned counsel for the 2nd respondent/Insurance Company had stated that the vehicle involved did not have insurance policy. Therefore, the claimant cannot seek relief against the 2nd respondent/Insurance Company.

7.On verification of the records, by this Court in C.M.A.No.2400 of 2012, it is found that the claimant / victim of the accident Pachiammal had preferred a complaint with the office of the Chief Judicial Magistrate, wherein the victim had complained that after registering the First Information Report regarding the accident involving a Motorcycle bearing Registration No.TN-30-B-1352, the Police had subsequently changed the number of vehicle as TN-27-A-4498 and laid the charge sheet against the rider/owner of TN-27-A-4498 and the said rider/owner had pleaded guilty in the Court of the learned Judicial Magistrate in C.C.No.667 of 2005. Therefore, it was requested to furnish the details regarding the complaint petition /protest petition filed on behalf of the claimant injured victim of the accident to the Commissioner of Police, Salem City in Crime number of F.I.R in Crime No.278 of 2005 under Sections 279 and 338 of IPC registered by the Traffic Investigation Wing, Salem City Police, complainant / Pachiammal.

8.The complaint of Pachiammal had registered complaint regarding the accident involving two wheeler bearing Registration No.TN-30-B-1352. Subsequently, the Investigation Officer had laid charge sheet with a different two wheeler bearing Registration No.TN-27-A-4498 and also prevailed upon the owner / rider of the said two wheeler TN-27-A-4498 to plead guilty and accordingly the said accused rider of the two wheeler had pleaded guilty before the Court of the learned Judicial Magistrate.

9.The claimant/injured was denied compensation on the ground that the vehicle number differs. Therefore, the complaint petition was given to concerned Office by the counsel for the injured/victim of the accident to furnish the details of the complaint whether enquiry conducted and what action had been initiated against the Investigation Officer of the said case to this Court.



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10. Perused the records, the learned counsel for the appellant Mr. Kuppasamy had furnished additional typeset wherein the deposition of the witnesses and documents marked by them before the learned Tribunal (learned I Additional Sub-Judge, Salem) had been furnished. This Court on perusal of the documents and the depositions had found that the claimant as P.W.1 had clearly stated the registration number of vehicle two wheeler involved in the accident. Also the claimant had fairly stated the facts regarding changing of the vehicle number by the Investigation Officer and the complaint preferred through her counsel to the Commissioner of Police as well as to the Ex.A-7 Deputy Inspector General of Police concerned. Her counsel before the Motor Accidents Claims Tribunal had helped her to obtain information regarding the accident through Right to Information Act petition from the Deputy Commissioner of Police, Salem City Police under Ex.A-7. In this reply it was clearly stated that the copy of F.I.R was not sent to Motor Accidents Claims Tribunal within a month as per Motor Vehicles Act, and to the Insurance Company. Also it is stated F.I.R was not registered as "unknown vehicle" and the motorcycle bearing Registration No. TN-30-B-1352 was not sent to Motor Vehicle Inspection.

11. On perusal of the deposition of the victim of the accident claimant as P.W.1, it is found that she had clearly stated that the rider of the vehicle bearing Registration No. TN-30-B-1352 had after knocking her down, stopped and parked the vehicle on the road side and engaged an auto and took her to the Kamala Hospital wherein she had underwent treatment. The persons who were nearby who had been at the place of occurrence had written the vehicle number and given to her. Ex.A-2 is the Accident Register from Kamala Hospital. It is the earliest document. Immediately after the accident, the victim was taken to Kamala Hospital on 16.06.2005 and admitted there for treatment of injuries. It clearly mentions the registration number of the vehicle, two wheeler bearing Registration No. TN-30-B-1352. Further, the owner of the vehicle bearing Registration No. TN-30-B-1352 had himself given a statement to the Police stating that he had handed over the vehicle to the mechanic for repairs. The mechanic while taking the vehicle on trial run had caused the accident and this information was furnished to him by the mechanic, that much of statement had been given by the owner of the vehicle who is the respondent in this appeal, namely, Gunasekaran.

12. The learned Tribunal had stated that the victim/claimant had not examined any of the witnesses to support her claim or the owner of the two wheeler bearing Registration No. TN-30-B-1352 to prove her contention.

13. As far as injuries are concerned, the Tribunal never insist for corroboration evidence. If the Tribunal had doubt about the veracity of the claimant then and there, the learned



Tribunal could have insisted the counsel for the claimant to summon the owner of the vehicle bearing Registration No.TN-30-B-1352 and either the witnesses from the area. Instead the Tribunal had rejected the evidence which amounts to miscarriage of justice and denial of just compensation to the claimant. In the light of the above discussion as per the evidence of P.W.1, it is clear that the accident occurred only involving the vehicle No. TN-30-B-1352. Therefore as owner of the vehicle /the 1st respondent in the appeal is liable to pay the compensation. Therefore, this Court has come to the conclusion that the accident was caused with the use of vehicle bearing Registration No.TN-30-B-1352.

Point for consideration:

Whether the appellant/claimant is entitled to the compensation?

14.In the light of the above discussion, the appellant/claimant herein is entitled to claim compensation for the injuries suffered by her and the disability caused to her.

15.As per the claim petition, the claimant had furnished her income as Rs.1,800/- per month by selling flower and vegetables on the street.

16.On perusal of the records, it is found that the respondents before the learned Tribunal, the 1st respondent, Gunasekaran, who is the sole respondent in this appeal had been the owner of the vehicle bearing Registration No.TN-30-B-1352. If he had been arrayed as accused in the Criminal Case, he, employed as Cashier in Salem Central Co-operative Bank, Panamarathupatti Branch may face disciplinary proceedings for involvement and pleading guilty in a Criminal Case which may result in his losing job if found guilty in a Criminal Case or fearing loss of promotion or loss of increment in a disciplinary proceedings. If he had insurance coverage for his vehicle, he could have remained ex-parte and the insurer of the vehicle is duty bound to pay compensation. As per the evidence of the R.W.1 before the learned Tribunal, the vehicle bearing Registration No.TN-30-B-1352 did not have insurance coverage. Therefore, it is to be presumed that the respondent herein had influenced the Investigation Officer to wriggle out from this Criminal Case so that he will not face disciplinary proceedings based on the Criminal Case, as he has risk in his job as an employee of the Salem Central Co-operative Bank. That is the only presumption available to this Court in the facts and circumstances of this case as gathered from the records that are available before this Court. This presumption is available under Section 114 of the Indian Evidence Act. The Court has to draw adverse inference and this sole respondent had influenced the Investigation in such a manner that a wrong vehicle had been included by the Investigation Officer.

17.As an ordinary citizen of this country, a poor

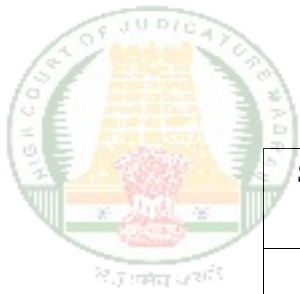


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illiterate victim of the accident had preferred her complaint with the help of her counsel to the Commissioner of Police, Salem City and to the Deputy Inspector General of Police, Salem Range regarding change of the vehicle by the Investigation Officer and pleading guilty by the rider of the two wheeler in a false case as per the victim. Also she had preferred the complaint to the Court of the learned Chief Judicial Magistrate Salem, under Ex.A-4 regarding the lapses on the part of the Investigation Officer. As a law abiding citizen, she had taken care for the protection of her right and involvement of the vehicle. Therefore, the finding of the Tribunal that she had not proved her case cannot at all be accepted. It is for the claimant and her counsel to recover the amount from the sole respondent in this appeal and the 1st respondent before the learned Tribunal, (learned I Additional Sub-Judge, Salem). As this Court could not accept the finding given by the learned Tribunal, (learned I Additional Sub-Judge, Salem) dismissing the claim of the ordinary illiterate citizen. Therefore, in all probabilities the evidence of the claimant before the learned I Additional Sub-Judge, the learned Tribunal, Salem is accepted by this Court and the rider of the two wheeler bearing Registration No.TN-30-B-1352 was at fault. Whether the sole respondent herein, Gunasekaran or the mechanic who had taken the vehicle for trial run, had caused the accident need not be considered. As per law of contract when the owner of the vehicle handed over the motor vehicle to mechanic, it is for him to face the risk when the vehicle is involved in the accident. If the vehicle did not have insurance coverage, then as owner of the vehicle, he is duty bound to compensate for the injury suffered by the victim.

18. In the light of the above discussion, this Court calculated the award as follows:

Sl. No.	Head under which the amount is awarded by this Court	Amount (in Rs.)
1	Medical bills as per Ex.A-3	52871
2	Pain and sufferings	25000
3	Future medical expenses	50000
4	Disability (Rs.2,000 per percentage X 25%) as per P.W.2 evidence of Doctor and Ex.A-9	50000
5	Extra nourishment	25000
6	Loss of income for six months (Rs.2,000/- X 6)	12000
7	Transportation	2000



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Sl. No.	Head under which the amount is awarded by this Court	Amount (in Rs.)
	Total	Rs.2,16,871/- (rounded off as Rs.2,17,000/-)

19. In this case, Gunasekaran being an employee of Salem Central Co-operative Bank has the resources to pay from his salary the compensation for the wrong by which the injury suffered by the victim of the accident / the claimant herein. Also the sole respondent, Gunasekaran is liable to pay the same failing which the amount to be attached from his salary by invoking execution proceedings by the claimant and her counsel before the Tribunal, Salem.

20. Accordingly, point for consideration is answered in favour of the appellant/claimant. The appellant/claimant is entitled to a sum of Rs.2,17,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Both the 1st respondent / owner of the vehicle and the 2nd respondent / insurer of the vehicle are jointly and severally directed to deposit the award amount now determined by this Court, along with interest and costs to the credit of M.C.O.P.No.942 of 2005 on the file of the Motor Accident Claims Tribunal, First Additional Sub-Court, Salem. As per the evidence available before the Tribunal, the rider of the two wheeler bearing Registration No.TN-30-B-1352, Bullet motorcycle even though belonging to the 1st respondent was not driven by him, therefore, the Insurance Company is not liable to pay the compensation. If the insurer disputes that the rider of the two wheeler on the date of accident was not competent to drive the two wheeler, then the 1st respondent is liable to pay the compensation. The insurer can also realise the same from the 1st respondent. The 2nd respondent/Insurance Company can recover the same from the 1st respondent.

21. In the result, this Civil Miscellaneous Appeal is partly allowed awarding a sum of Rs.2,17,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The order and decreetal order of the Tribunal is set aside and M.C.O.P.No.942 of 2005 is allowed. The Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs to the credit of M.C.O.P.No.942 of 2005 on the file of the Motor Accident Claims Tribunal, First Additional Sub-Court, Salem, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any,



already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment, and recover the same from the 1st respondent/owner of the vehicle, including deduction from his salary or attaching properties belonging to the 1st respondent for realisation of the same. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs. The appellant is directed to pay appropriate Court fees within a period of two months, failing which, he is not entitled to claim interest on the award amount. No costs.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

The First Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Salem.

C.M.A.No.2400 of 2012

EV (CO)
GMY (01/11/2021)