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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.03.2021
Pronounced on : 21.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2438 of 2012
and M.P.No.1 of 2012

The National Insurance Co.Ltd.,
46, Moore Street,
Chennai - 600 001.

.. Appellant / 2nd Respondent

Vs.

1.M.Kamaraj
S/o.M.S.Mani

.. 1st Respondent / Petitioner

2.S.Jothilingam

.. 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.02.2012 made in M.C.O.P.No.1416 of 2009 on the file of the Motor Accident Claims Tribunal, Court of Small Causes-IV, Chennai.

For Appellant : Mr.S.Vadivel

For R1 : M/s.C & K.Law Firm

For R2 : Vacated private notice

JUDGMENT

(The case has been heard through video conference)

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 03.02.2012 made in M.C.O.P.No.1416 of 2009 on the file of the Motor Accident Claims Tribunal, Court of Small Causes-IV, Chennai.



2.The appellant is the 2nd respondent in M.C.O.P.No.1416 of 2009 on the file of the Motor Accident Claims Tribunal, Court of Small Causes-IV, Chennai. The first respondent filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.04.2009.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent riding by the rider of the motorcycle belonging to the second respondent and directed the appellant-Insurance Company to pay a sum of Rs.1,27,800/- as compensation to the first respondent/claimant.

4.Challenging the award of the Tribunal dated 03.02.2012 made in M.C.O.P.No.1416 of 2009, the appellant-Insurance Company has come out with the present appeal.

5.The learned counsel appearing for the appellant/Insurance Company had vehemently objected to the award passed by the learned Tribunal stating that the accident alleged to have taken place is not true. The date of accident was 03.04.2009, at about 20.45 hours while the 1st respondent/claimant was travelling as a pillion rider on the motorcycle bearing Registration No.TN-02-L-6588, near Ashok Pillar, Mullai Nagar, at that time, the rider of the motorcycle suddenly applied brake. Thereby, the motorcycle skidded and the claimant fell down and suffered injuries. The 1st respondent is the owner of the vehicle and he remained ex-parte before the Tribunal. The 2nd respondent / Insurance Company had denied the liability stating that the claimant might have suffered injury elsewhere. The learned Tribunal failed to consider the evidence in proper perspective and had granted the award which is highly excessive. Therefore, this appeal is liable to be dismissed.

6.The learned counsel for the 1st respondent submitted that the Tribunal had reasonably calculated the compensation amount by applying the multiplier method. There is no necessity to interfere with the award by this Court.

Point for Consideration:

Whether the award passed by the Tribunal is liable to be set aside?



7. Perused the claim petition filed by the claimant/injured victim of the accident in M.C.O.P.No.1416 of 2009 and the award passed by the learned Tribunal.

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8. On perusal of the Ex.P1 which is a receipt, mentions Pavithra Hospital letter pad, wherein, it is stated that the date of accident as 03.04.2009. It is not supported with X-ray or with treatment details particularly as mentioned by P.W.2/Doctor, regarding the injuries suffered by the claimant. Ex.P2/Prescription slip. Therefore, merely based on Ex.P2, the Tribunal could not arrive at a conclusion that the claimant was injured or he suffered fractures. It is the case of the appellant that the two wheeler rider had caused the accident and pillion rider is not entitled to claim award or compensation from the insurer of the vehicle.

9. As per the evidence of the claimant available before the Tribunal, the 1st respondent had undergone treatment as out-patient at Pavithra Hospital, Kodungaiyur, he had furnished only prescription as Ex.P-2, OP chit as Ex.P-1 and disability certificate issued under Ex.P-6 by a Doctor who was examined as P.W.2, but he is not the Doctor who treated the claimant. There is no evidence regarding treatment as in-patient for the fractures suffered by the 1st respondent/claimant. As per the evidence of P.W.2/Doctor/Thiagarajan he had assessed the disability after two and half year from the date of alleged occurrence of the accident. As per the claim petition, the claimant travelled as a pillion rider on the two-wheeler belonging to the 2nd respondent in this appeal and the 1st respondent in the claim petition. As per the contention of the appellant / Insurance Company, the alleged occurrence itself is fictitious as the 1st respondent had not suffered any disability as per the medical evidence available before the Tribunal, even for the sake of arguments if it is to be considered the claim of disability cannot be accepted considering the occupation of the 1st respondent as a staff of the Small Causes Court, Chennai. The award passed by the Tribunal had been influenced by the fact that the claimant is a staff of Small Causes Court, Chennai that is why without proper evidence, the Tribunal had granted award exceeding under various heads, particularly for the loss of income Rs.10,000/-, Transport to hospital Rs.5,000/-, for Extra nourishment Rs.5,000/-, for Damage to clothing Rs.1,000/-, for Medical expenses Rs.1,800/-, for Pain and sufferings Rs.70,000/-,

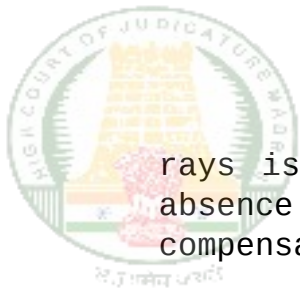


in the reported ruling pain and suffering will be maximum award is granted only Rs.20,000/- not more than that and for 35% Permanent disability for each Rs.2,000/- per percentage had been granted. He had not suffered any disability, the claim petition is itself is found to be fictitious then the 2nd respondent before the Tribunal, the appellant herein had vehemently objected regarding the claim of the claimant in the claim petition. The Tribunal had ignored the contents of the counter and had granted award Rs.1,27,800/- and fastened the liability on the appellant herein. Therefore, the appellant seeks to set aside the award.

10.The learned counsel for the 1st respondent/claimant submitted that the learned Tribunal had properly appreciated the evidence let in before the Tribunal and arrived at a reasonable award. There is nothing for this Court to interfere with the award passed by the Tribunal.

11.On perusal of the records of the M.C.O.P.No.1416 of 2009, it is found that the documents relied on by the learned Tribunal to arrive a just conclusion that the pillion rider suffered injury resulting in partial permanent disability, cannot be accepted in the light of the medical records furnished by the claimant under Ex.P-1/OP Chit, Ex.P-2/Prescriptions and Ex.P-5/Attested copy of FIR in Cr.No.235/2009 registered at G3 Kilpauk Traffic Investigation. There are no records regarding the treatment of fractures by specialist Doctors dealing with Orthopaedics and the claimant having been treated as in-patient. The claimant himself in his evidence as P.W.1 claims he had undergone treatment at Puttur for which he can be granted award only under the head 'pain and sufferings' i.e., Rs.20,000/- maximum and nothing more.

12.The arguments of the learned counsel for the the appellant regarding the vehement objection in the counter disputing the contention of the claim petition regarding the occurrence of the accident and the documents under Ex.P-1, Ex.P-2 and Ex.P-5 and the absence of X-ray to prove fractures. The submission of the learned counsel for the appellant/Insurance Company is found acceptable. Therefore, the award passed by the Tribunal, is liable to be set aside. The appeal can be partly allowed. The award is reduced to Rs.20,000/- treated as 'pain and sufferings' for simple injuries as there is no support of X-rays regarding claim of fractures in the Board to prove fractures X-



rays is must in claims cases no X-rays had been marked in the absence of X-ray only the 1st respondent/claimant is entitled to compensation for Rs.20,000/- for pain and sufferings.

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13. Accordingly, point for consideration is answered in favor of the appellant/Insurance Company and in the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,27,800/- is hereby reduced to Rs.20,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant being the insurer of the vehicle is directed to deposit the reduced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1416 of 2009 on the file of the Motor Accident Claims Tribunal, Court of Small Causes-IV, Chennai. On such deposit, the 1st respondent is permitted to withdraw the reduced award amount along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

The IV Judge,
Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.

Copy To:

The Section Officer
V.R.Section, High Court, Chennai.

+1cc to M/s.S.Vadivel, Advocate, S.R.No.24639

+1cc to M/s.C.Munusamy, Advocate, S.R.No.24339

C.M.A.No.2438 of 2012

SSV(CO)
SB(29/10/2021)