

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2401 of 2019
and C.M.P.No.12414 of 2019

The Branch Manager
Royal Sundaram Aliance Insurance Co. Ltd.
No.1-15, 22 MI, 1st floor
Shanmugam complex
New Edapadi Road
Sangakiri - 637 301. Appellant/2nd Respondent

Vs.

1.G.Kumar1st Respondent/Petitioner
2.K.Rathinavel2nd Respondent/
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.06.2018 made in M.C.O.P.No.576 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.G.Vasudevan
For Respondents : No appearance

J U D G M E N T

This matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 11.06.2018 made in M.C.O.P.No.576 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.576 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. The 1st respondent filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.11.2007.

3. According to the 1st respondent, on the date of accident i.e., on 08.11.2007 at about 1.20 p.m., while he was proceeding in a goods auto from Krishnagiri to Hosur National Highways Road, the driver of the lorry belonging to the 2nd respondent who was driving the same in a rash and negligent manner, suddenly stopped the lorry without showing any signal in the National Highways Road and the 1st respondent, who was unable to control the vehicle, dashed behind the lorry and thus, the accident has occurred. In the accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the 2nd respondent and appellant.

4. The 2nd respondent, owner of the lorry, remained exparte before the Tribunal.

5. The appellant/Insurance Company insurer of the lorry filed counter statement denying the averments made by the 1st respondent and stated that the 1st respondent is the tort-feasor, he alone drove the minor auto in a rash and negligent manner and hit the lorry, which was parked in the left side of the road. F.I.R. was registered only against the 1st respondent. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent. The appellant/Insurance Company has also denied the age, avocation, income and nature of injuries sustained by the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1 and eight documents were marked as Exs.P1 to P8. The appellant/Insurance Company did not let in any oral and documentary evidence. The disability certificate issued by the Medical Board was marked as Ex.C1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that in the accident, the 1st respondent sustained injuries due to involvement of the lorry belonging to the 2nd respondent and the 2nd respondent, owner of the lorry, is vicariously liable to pay compensation to the 1st respondent and directed the appellant/Insurance Company being the insurer of the said lorry to pay a sum of Rs.4,02,280/- as compensation to the 1st respondent.

8. Against the said award dated 11.06.2018 made in M.C.O.P.No.576 of 2017, the appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the accident has occurred only due to

negligence on the part of the 1st respondent, the driver of the goods auto, who hit back side of the parked lorry. The 1st respondent is the tort-feasor and F.I.R. is registered only against the 1st respondent. In view of the same, the appellant is not liable to pay any compensation to the 1st respondent as the accident occurred due to his negligence. The Tribunal erroneously awarded Rs.2,69,280/- towards 40% disability and Rs.1,28,000/- towards medical expenses, which are excessive. The Tribunal has awarded interest @ 9% per annum which is on the higher side and prayed for setting aside the award of the Tribunal.

10. Though notice has been served on the respondents 1 and 2 and their names are printed in the cause list, when the matter came up for hearing on 04.01.2021, there was no representation for the respondents 1 and 2 and to give one more opportunity, the matter was directed to be posted today. Even today also, there is no representation for the respondents 1 and 2.

11. Heard the learned counsel appearing for the appellant and perused the entire materials on record.

12. It is the contention of the 1st respondent that while he was driving the goods auto, the driver of the lorry belonging to the 2nd respondent suddenly stopped the lorry without any signal and the 1st respondent dashed on the back side of the lorry and the accident has occurred only due to negligent stopping by the driver of the lorry. In the accident, the 1st respondent sustained injuries and filed claim petition claiming compensation for the injuries. In support of his case, the 1st respondent examined himself as P.W.1. On the other hand, it is the contention of the appellant/Insurance Company that the 1st respondent drove the auto in a rash and negligent manner and dashed on the back side of the lorry, which was parked on the left hand side of the road. The appellant has not examined the driver of the lorry or any eye-witness to prove their case. Before the Tribunal, the appellant has not let in any oral and documentary evidence. The contention of the learned counsel appearing for the appellant that F.I.R. is registered only against the 1st respondent and he is the tort-feasor is not acceptable. The complaint was lodged by the driver of the lorry, who is an interested person. More weightage has to be given on the evidence let in before the Tribunal on oath than the contents in the F.I.R. In the present case, the Tribunal considering that the claim petition was filed under Section 163-A of the Motor Vehicles Act, held that the 1st respondent need not plead and prove negligence and in the absence of any contra evidence by the appellant, held that the 1st respondent has proved that he suffered injuries due to the accident involving the lorry belonging to the 2nd respondent and as owner, the 2nd

respondent is vicariously liable to pay compensation to the 1st respondent for the injuries caused involving the lorry belonging to the 2nd respondent and the appellant as insurer is liable to pay compensation. There is no error in the award of the Tribunal directing the appellant to pay compensation to the 1st respondent.

13.As far as quantum of compensation is concerned, when a claim petition is filed under Section 163-A of the Motor Vehicles Act, the compensation has to be awarded as per the II Schedule. At the time of accident, the 1st respondent was aged 33 years. The Tribunal applied multiplier 17 as per the II Schedule and fixed monthly income of the 1st respondent as Rs.3,300/- and the same is valid. As per II Schedule, the appellant is entitled to only a sum of Rs.15,000/- towards medical expenses and Rs.5,000/- for pain and suffering for grievous injuries. The Tribunal awarded a sum of Rs.1,28,000/- as compensation towards medical expenses. Therefore, the same is reduced to Rs.15,000/-. The amount granted by the Tribunal towards pain and suffering for grievous injuries is confirmed. The Tribunal has awarded interest @ 9% per annum, which is excessive and hence the same is hereby reduced to 7.5% per annum. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Partial permanent disability	2,69,280	2,69,280	Confirmed
2.	Medical expenses	1,28,000	15,000	Reduced
3.	Grievous injuries	5,000	5,000	Confirmed
	Total	4,02,280	2,89,280	Reduced by Rs.1,13,000/-

14.With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.4,02,280/- awarded by the Tribunal is hereby reduced to Rs.2,89,280/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the 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. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.576 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj

To

The Special Subordinate Judge
Motor Accident Claims Tribunal
Krishnagiri.

+1cc to Mr.G.Vasudevan, Advocate, S.R.No.797

C.M.A.No.2401 of 2019
and C.M.P.No.12414 of 2019

KJ(CO)
KM(26/04/2021)

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