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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.07.2021	Delivered on: 29.07.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.Nos.351 of 2018 & 1550 of 2021
and
C.M.P.No.8108 of 2021

C.M.A.No.351 of 2018:
Senthil Kumar

..Appellant/Petitioner

Vs.

1.Sundararasu

2.M/s.Sri Ram General Insurance Company Limited,
Chennai.

..Respondents/Respondents

C.M.A.No.1550 of 2021:

Shriram General Insurance Company Limited,
Chennai.

..Appellant/2nd Respondent

Vs.

1.Senthil Kumar

2.Sundararasu

..Respondents/Petitioner/1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.09.2017 made in M.C.O.P.No.177 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Chidambaram.

In C.M.A.No.351 of 2018:

For Appellant : Mr.A.Murugan
For R2 : Mr.S.Dhakshnamoorthy

In C.M.A.No.1550 of 2021:

For Appellant : Mr.S.Dhakshnamoorthy
For R1 : Mr.A.Murugan



COMMON JUDGMENT

(The matter is heard through "Video Conferencing/Hybrid mode".)

These Civil Miscellaneous Appeals have been filed against the award of the Tribunal dated 21.09.2017 made in M.C.O.P.No.177 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Chidambaram.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The claimant filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.02.2010 against the respondents, being the owner and insurer of the lorry respectively.

4.According to the claimant, on 15.02.2010 at about 20.30 hours, while he was travelling as cleaner in the lorry bearing Registration No.TN 31 AY 8074 from Punnanchatram to Sethiyathope, near Puliyur Cement Factory, one of the lorry tyre got punctured and therefore, he and the driver removed the tyre and changed the same. After changing the lorry tyre, the claimant loaded the punctured tyre on the backside of the lorry and at that time, the driver of the lorry without giving any signal or without any reason, drove the lorry in the backward direction and dashed against the claimant and caused the accident. In the accident, the claimant sustained multiple grievous injuries all over the body and immediately after the accident, he was taken to G.H., Karur and was referred to G.H., Trichy, where he was taken treatment as inpatient from 16.02.2010 to 26.02.2010. Thereafter, he has taken treatment as inpatient at Aravind Eye Hospital, Pondicherry from 03.03.2010 to 06.03.2010. He has taken treatment till filing of the claim petition. Therefore, the claimant filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him against the respondents, being the owner and insurer of the lorry respectively.

5.The 1st respondent-owner of the lorry remained exparte before the Tribunal.

6.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the claimant. The 2nd respondent denied the manner of accident as alleged by the claimant. The delay of 22 days in lodging the F.I.R. shows that it is only an after thought for unlawful gain. At the time of accident, the said lorry was not moving at all and it was a



stationed vehicle and the engine of the vehicle was also not running at that time. The claimant got himself injured while he was tightening the wheel nuts with wheel brace & lever for replacing the punctured wheel of the said stationed lorry. The Police complaint was preferred after 22 days from the date of accident. After investigation, the S.H.O.Pasupathipalayam Police has concluded the case in Crime No.328 of 2010 as mistake of fact or law and issued notice to the claimant and the Police has also submitted the Final Report to the Judicial Magistrate 1, Karur. The accident has not occurred due to the negligence on the part of the driver of the lorry belonging to 1st respondent. The said incident is not an accident as defined under the Motor Vehicles Act. The Insurance Policy issued by the 2nd respondent is valid from 10.09.2009 to 09.09.2010 and the 1st respondent-insured shall produce the copy of the policy and the same shall be exhibited and read in evidence. The 1st respondent failed to furnish the particulars of Policy, date, time and place of accident, particulars of injured, name of the driver and particulars of driving license. Hence, the 2nd respondent is not liable to pay any compensation to the claimant. The 2nd respondent denied the age, avocation, income, nature of injuries, medical expenses, transportation and disability suffered by him. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition as against the 2nd respondent.

7.Before the Tribunal, the claimant examined himself as P.W.1, Dr.Ashokkumar as P.W.2, Dr.Balamurugavel as P.W.3, Father of the claimant viz., Radhakrishnan was examined as P.W.4 and the driver of the lorry, Ramesh was examined as P.W.5 and 28 documents were marked as Exs.P1 to P28. The 2nd respondent-Insurance Company examined one Balamurugan, Legal Advisor of the 2nd respondent as R.W.1 and marked 3 documents as Exs.R1 to R3. X-Rays were marked as Exs.W1 to W3.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.8,83,000/- as compensation to the claimant.

9.To set aside the said award dated 21.09.2017 made in M.C.O.P.No.177 of 2010, the 2nd respondent has come out with an appeal in C.M.A.No.1550 of 2021 and not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with an appeal in C.M.A.No.351 of 2018.

10.The learned counsel appearing for the 2nd respondent contended that the claimant deliberately suppressed the fact

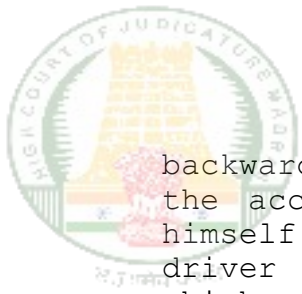


that he got injured of his own negligence and the Police Authority has closed the F.I.R. lodged by the claimant as mistake of fact as the claimant was solely responsible for the accident and he has given false complaint by claiming himself as cleaner of the lorry for the purpose of claiming compensation from the Insurance Company. The compensation awarded by the Tribunal at Rs.8,83,000/- is highly excessive and prayed for setting aside the award passed by the Tribunal and also for dismissal of C.M.A.No.351 of 2018 filed by the claimant.

11.Per contra, the learned counsel appearing for the claimant contended that in the accident, the claimant has completely lost his left eye sight and also suffered fracture of bone at the left side of the skull, fracture of nose bone, fracture of jaw bones and multiple injuries all over the body and head. PW.3/Doctor examined the claimant and fixed the percentage of disability of the claimant at 62% and issued Ex.P19/disability certificate to that effect. The Tribunal erroneously reduced the percentage of disability from 62% to 50% and awarded compensation only for 50% disability. The Tribunal ought to have awarded compensation for 62% disability as assessed by P.W.3/Doctor. At the time of accident, the claimant was aged 29 years, working as Lorry Cleaner under the 1st respondent and was earning a sum of Rs.8,000/- per month. But, the Tribunal has fixed a meagre sum of Rs.6,500/-per month as notional income of the claimant and awarded meagre amount as compensation for loss of earning capacity. The appellant has taken treatment as inpatient from 16.02.2010 to 26.02.2010 at G.H., Trichy and at Aravind Eye Hospital, Pondicherry from 03.03.2010 to 06.03.2010. The amounts awarded by the Tribunal towards transportation, extra nourishment, medical expenses, other miscellaneous expenses, pain and sufferings and loss of amenities are meagre and prayed for enhancement of compensation and for dismissal of C.M.A.No.1550 of 2021 filed by the 2nd respondent-Insurance Company.

12.Heard the learned counsel appearing for the claimant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

13.From the claim petition filed by the claimant, it is seen that it is the case of the claimant that on 15.02.2010 at about 20.30 hours, while he was travelling as cleaner in the lorry bearing Registration No.TN 31 AY 8074 from Punnanchatram to Sethiyathope, near Puliyut Cement Factory, one of the lorry tyre got punctured and therefore, he and the driver removed the punctured tyre and changed the same. After changing the lorry tyre, the claimant loaded the punctured tyre on the backside of the lorry and at that time, the driver of the lorry without giving any signal or without any reason, drove the lorry in the



backward direction and dashed against the claimant and caused the accident. To substantiate his case, the claimant examined himself as P.W.1, examined his Father as P.W.4, examined the driver of the lorry as P.W.5 and marked the F.I.R. as Ex.P1, which was registered against the driver of the lorry. P.W.1, in his chief examination has deposed that while he was travelling as a cleaner in the lorry bearing Registration No.TN 31 AY 8074 from Punnanchatram to Sethiyathope, near Puliyur Cement Factory, one of the lorry tyre got punctured and therefore, he and the driver of the lorry changed the punctured tyre with the new one. While loading the punctured tyre at the top of the lorry on its rear side, the driver of the lorry suddenly started the lorry and drove the same in a reverse direction in a rash and negligent manner and due to the same, he sustained multiple fracture and injuries all over the body. But, P.W.5/driver of the lorry in his chief examination has deposed that on 15.02.2010, while he was driving the lorry loaded with construction aggregates from Cuddalore to Sethiyathope, at Puliyur Cement Factory, a tyre of the lorry got punctured and due to the same, unplugged the tyre and while repairing the puncture, he asked the cleaner to put it off the tyre on the construction aggregates. While moving the lorry in the reverse direction for letting the tractor to go in front of the lorry, the cleaner got injured on his head and eye. The other two persons who helped for the process of changing the tyre were not present. While operating the vehicle, the tyre from the top of the lorry has fallen down and the accident has also occurred like that.

14.From the materials available on records, it is seen that P.W.1 has given complaint to the Pasupathipalayam Police Station in F.I.R.No.328 of 2010 against the driver of the lorry by stating the manner of accident as per his chief examination. But, P.W.1 in his re-examination has deposed that the accident has occurred before changing the wheel while taking the stepney. P.W.1 has not mentioned anywhere about the two persons who helped during the process of changing the tyre as per the evidence of P.W.5. Further, P.W.1 has given complaint to the Police after a delay of 22 days from the date of accident. But, P.W.5/driver of the lorry in his chief examination has deposed that while he was driving the lorry loaded with construction aggregates from Cuddalore to Sethiyathope, at Puliyur Cement Factory, a tyre of the lorry got punctured and due to the same, unplugged the tyre and while repairing the puncture, he asked the cleaner to put it off the tyre on the construction aggregates. While moving the lorry in the reverse direction for letting the tractor to go in front of the lorry, the cleaner got injured on his head and eye. The other two persons who helped for the process of changing the tyre were not present. From the evidence of P.W.1 and P.W.5, it is seen that there are



contradictions with regard to the manner of accident as alleged by them and also the delay of 22 days in lodging the complaint is not acceptable one. Further, the claimant has not filed any Accident Register or Rough Sketch in support of his case and also in Ex.P6/discharge summary, it is mentioned only accidental injury and it has not been mentioned that he sustained injuries involving motor vehicles. The claimant has not approached the Court with clean hands. Though it is true that the claimant has sustained injuries in his face and underwent treatment, the claimant ought to have proved that there is involvement of motor vehicle for the injuries sustained by him. It is the evidence of P.W.1/claimant & P.W.5/driver of the lorry that the accident occurred since the vehicle was rashly driven in a reverse direction. If it is true, then obviously the nature of injuries would be different.

15.In view of the above contradictions and failure on the part of the claimant for not filing any Accident Register or Rough Sketch, this Court is of the considered view that the award passed by the Tribunal is erroneous and the same is liable to be set aside and it is hereby set aside. The 2nd respondent-Insurance Company is permitted to withdraw the award amount, if any lying in the deposit to the credit of M.C.O.P.No.177 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Chidambaram, if the award amount has already been deposited by them. Since, it is the case of the claimant that he was working under the 1st respondent as a Cleaner at the time of accident, he is at liberty to claim the compensation amount from the 1st respondent.

16.In the result, C.M.A.No.351 of 2018 filed by the claimant is dismissed and C.M.A.No.1550 of 2021 filed by the 2nd respondent-Insurance Company is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

krk

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Chidambaram.



Copy to
The Section Officer,
VR Section,
High Court,
Madras.

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+1 CC to Mr.A.Murugan, Advocate sr 37024.

C.M.A.Nos.351 of 2018 & 1550 of 2021

AJS (CO)
SP(27/10/2021)