



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1574 of 2020 & 47 of 2021
and
C.M.P.No.11599 of 2020

C.M.A.No.1574 of 2020:

The Manager,
Cholamandalam MS General Insurance Company Limited,
"Rashmi Towers",
2nd Floor, No.1, Village Road,
Nungambakkam,
Chennai - 600 034.

.. Appellant/2nd Respondent

Vs.

1. M.Kamaraj

2. S.K.Baskar .. Respondents/Petitioner/1st Respondent

C.M.A.No.47 of 2021:

M. Kamaraj

.. Appellant/Petitioner

Vs.

1. S.K.Baskar

2. The Manager,
Cholamandalam MS General Insurance Company Limited,
"Rashmi Towers",
2nd Floor, No.1, Village Road,
Nungambakkam,
Chennai - 600 034.

.. Respondents/Respondents

(No relief sought against 1st respondent.
Hence, notice to R1 dispensed with)



Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.01.2020 made in M.C.O.P.No.243 of 2012 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Kanchipuram.

In C.M.A.No.1574 of 2020:

For Appellant : Ms.R.Sree Vidhya
For R1 : Mr.M.Sivakumar
for Mr.C.Prabakaran

In C.M.A.No.47 of 2021:

For Appellant : Mr.M.Sivakumar
for Mr.C.Prabakaran
For R2 : Ms.R.Sree Vidhya

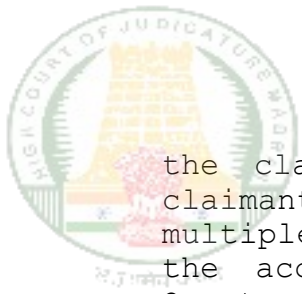
C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the award dated 06.01.2020 made in M.C.O.P.No.243 of 2012 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Kanchipuram.

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.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.04.2012 against the respondents, being the owner and insurer of the Tractor respectively.

4.According to the claimant, on 11.04.2012 at about 07.30 P.M., while he was riding his Honda Unicorn motorcycle bearing Registration No.TN 07 AU 8466 on the extreme left side of the Pukkadurai - Uthiramerur Highways Road near Nadarajapuram Koot Road opposite to Samathuvapuram, the driver of the Tractor bearing Engine No. EBSOW 3313 and Chasis No. 11C571526 belonging to 1st respondent, drove the same from the opposite direction without following the road traffic rules in a rash and negligent manner at a high speed, dashed against the motorcycle rode by



the claimant and caused the accident. In the accident, the claimant was thrown away from the motorcycle and sustained multiple grievous injuries all over his body. Immediately after the accident, the claimant was admitted in Government Head Quarters Hospital, Chengalpet and thereafter he was referred to MIOT Hospital, Ramapuram, Chennai for further medical treatment. Therefore, the claimant filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him against the respondents, being the owner and insurer of the Tractor respectively.

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

6.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the claimant. According to 2nd respondent, the claimant only rode his motorcycle without wearing helmet, under the influence of alcohol in a rash and negligent manner and hit behind the parked vehicle and invited the accident. The 1st respondent's vehicle was not involved in the accident. As per A.R., one Truck was involved in the accident and as per Discharge Summary, one Lorry was involved in the accident. Hence, due to the contradictions, the 2nd respondent is not liable to pay any compensation to the claimant. Further, the driver of the Tractor belonging to 1st respondent was not possessing valid driving license and also the 1st respondent's Tractor was not insured with the 2nd respondent at the time of accident. The 2nd respondent denied the manner of accident as alleged by the claimant. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the claimant examined himself as P.W.1 and 13 documents were marked as Exs.P1 to P13. The 2nd respondent-Insurance Company examined Dr.Ramanikanth as R.W.1 and examined Sagayaraj and P.Ramesh as R.W.2 & R.W.3 and marked copy of the letter as Ex.R1.

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 Tractor belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.12,28,650/- as compensation to the claimant.

9.To set aside the said award dated 06.01.2020 made in M.C.O.P.No.243 of 2012, the 2nd respondent has come out with an appeal in C.M.A.No.1574 of 2020 and not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with an appeal in C.M.A.No.47 of 2021.



10. The learned counsel appearing for the 2nd respondent contended that the accident has not occurred as alleged by the claimant. The claimant in a drunken mood in a rash and negligent manner, dashed on the backside of the parked vehicle and invited the accident. The Tractor Trailer belonging to 1st respondent and insured with 2nd respondent was not involved in the accident. The wife of the claimant, who gave the complaint is a Court Staff and using her influence, she has falsely implicated the Tractor Trailer, which was parked in the road. R.W.2/Investigating Officer had reached the spot immediately after the accident and commenced the investigation. But only on 13.04.2012, i.e., after two days of the accident, F.I.R. was registered based on the information given by the wife of the claimant. In the F.I.R., R.W.2 deliberately did not mention the occupation of the complainant with mala-fide intention. No damage was caused to the Tractor Trailer and the same has been proved in the Motor Vehicle Inspector's report. In the Accident Register, it has been mentioned that accident has occurred in collusion with Tractor, whereas in the Discharge Summary, the offending vehicle was mentioned as Lorry. R.W.1/Doctor, who treated the claimant deposed that claimant was conscious and he only furnished the details and the same was recorded in the Accident Register. The Tribunal failed to properly consider the evidence of R.W.1 and erroneously held that vehicle belonging to 1st respondent was involved in the accident. There is a vital discrepancy regarding the version of the accident also. According to claimant, he was going to Uthiramerur from Pukkathurai and Tractor Trailer came from opposite direction and collided with his vehicle. On the other hand, according to R.W.2, the information provided to him by two persons immediately after the accident was that both the vehicles were going in the same direction, i.e., from Uthiramerur to Pukkathurai at the time of accident. This contradiction was not properly appreciated by the Tribunal. The wife of the claimant using her influence as a Court Staff, coerced with the driver of the Tractor to admit his guilt and paid fine. The learned counsel appearing for the 2nd respondent further submitted that without there being any evidence with regard to functional disability, the Tribunal adopted multiplier method and granted compensation for disability. The claimant is not entitled for any enhancement and prayed for setting aside the award of the Tribunal and for dismissal of C.M.A.No.47 of 2021, filed by the claimant.

11. Per contra, the learned counsel appearing for the claimant contended that accident has occurred while the claimant was riding the motorcycle, the driver of the Tractor Trailer belonging to 1st respondent came in a rash and negligent manner and dashed on the motorcycle and caused the accident. The claimant proved the same by examining himself as P.W.1 and by



marking F.I.R., which was registered against the driver of the Tractor Tractor. The driver of the Tractor Tractor admitted his guilt and paid fine. The 2nd respondent has failed to prove that Tractor Tractor was not involved in the accident. R.W.2/Investigating Officer deposed about registering the F.I.R. against the driver of the Tractor Tractor. The 2nd respondent has not examined the driver of the Tractor Tractor or any eyewitness to disprove the evidence of claimant as P.W.1. The claimant or his wife have not influenced the Police to register a false case against the driver of the Tractor Tractor. In the accident, the claimant sustained injuries and his right leg was amputated. At the time of accident, the claimant was working as Site Engineer in NEXG-Space Creators Company and was earning a sum of Rs.30,000/- per month. The claimant was aged 36 years at the time of accident, the Tribunal failed to grant any enhancement towards future prospects. The claimant has taken treatment as inpatient from 11.04.2012 to 02.05.2012 for 21 days at MIOT Hospital. The amounts awarded by the Tribunal towards attendant charges, pain and sufferings and extra nourishment are meagre and prayed for dismissal of C.M.A.No.1574 of 2020 filed by the 2nd respondent-Insurance Company and for enhancement of compensation.

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

13.From the materials on record, it is seen that it is the case of the claimant that while he was riding the motorcycle, the driver of the Tractor Tractor belonging to 1st respondent drove the Tractor Tractor in a rash and negligent manner, dashed against the motorcycle rode by the claimant and caused the accident. In the accident, the claimant sustained injuries and he filed claim petition claiming compensation for the injuries sustained by him. To substantiate his case, he examined himself as P.W.1 and marked F.I.R., which was registered against the driver of the Tractor Tractor as Ex.P1. On the other hand, it is the case of the 2nd respondent-Insurance Company that the Tractor Tractor was not involved in the accident and accident has occurred only due to the rash and negligent riding by the claimant, who under the influence of alcohol, dashed on the parked vehicle. The claimant using influence of his wife, who is a Court Staff falsely implicated the Tractor Tractor in the accident. In support of their case, the 2nd respondent examined, R.W.1, their official and R.W.2 - Investigating Officer. R.W.2 deposed that he reached the spot immediately and found that both the Tractor and Tractor as well as the motorcycle were on the spot and enquired two persons and registered F.I.R. From the materials on record, it is seen that the evidence of R.W.2 does not advance the case of the 2nd respondent. The 2nd respondent



relied on the evidence of R.W.1, contended that there is a contradiction with regard to involvement of the vehicle and claimant was under the influence of alcohol at the time of accident. No blood test was conducted to found out the contents of alcohol. The 2nd respondent failed to prove that claimant was under the influence of alcohol. The 2nd respondent has not examined the driver of the Tractor Tractor, who is the best witness to prove the falsity of the case of the claimant and also failed to prove that driver of the Tractor Tractor, only under the influence of wife of the claimant, pleaded guilty and paid fine. In view of the above materials, the 2nd respondent failed to prove that the claimant using the influence of his wife as Court Staff, registered a false complaint. The Tribunal considering the entire materials, held that accident has occurred only due to rash and negligent driving by the driver of the Tractor Tractor belonging to 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.As far as quantum of compensation is concerned, it is the case of the claimant that he sustained multiple injuries and has taken treatment as inpatient from 11.04.2012 to 02.05.2012 for 21 days at MIOT Hospital. The claimant produced Ex.P3/discharge summary, Ex.P4/MIOT Hospital documents, Ex.P7/disability certificate and Exs.P12 & P13/MIOT Hospital Bills to prove the nature of injuries, disability, amount spent towards medical expenses and period of treatment. The claimant was working as Site Engineer in NEXG-Space Creators Company and was earning a sum of Rs.30,000/- per month. The Tribunal considering the age of the claimant and percentage of disability suffered by him, adopted multiplier method for granting compensation towards disability. From the materials on record, it is seen that the claimant has produced Ex.P7/Handicapped Certificate issued by the Government of Tamil Nadu. The said certificate is issued to the claimant only to avail social benefit. The claimant has not examined any Doctor to prove that he is totally disabled and he cannot do any work. In the absence of any evidence with regard to functional disability and loss of earning capacity, the multiplier method adopted by the Tribunal to award compensation is not correct. In view of the excess amount granted by the Tribunal, the claimant is not entitled for any enhancement and the compensation awarded by the Tribunal is hereby confirmed.

15.The compensation awarded by the Tribunal at Rs.12,28,650/- is hereby confirmed together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd-respondent is directed to deposit the award amount 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.243 of 2012 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Kanchipuram. On such deposit, the claimant is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal.

16.In the result, both the Civil Miscellaneous Appeals are dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

krk

To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Kanchipuram.

Copy to:

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

+1cc to M/s.R.Sree Vidhya, Advocate, S.R.No.7540

C.M.A.Nos.1574 of 2020 & 47 of 2021

AJS (CO)
SU(01/10/2021)