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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2982 of 2019

Shanmugam

...Appellant/Petitioner

Vs.

1. Manivasagan

2. The Manager

ICICI Lombard General Insurance
Company Limited
No.5, 3rd floor, Arcade
Annamalai nagar,
Karur Bye-pass road
Trichy.

...Respondents/ Respondents

R1-Exparte before Tribunal

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.03.2019 made in M.C.O.P.No.88 of 2017 on the file of Motor Accident Claims Tribunal, Sub Court, Jayankondam.

For Appellant : Mr.V.M.Venkatramana

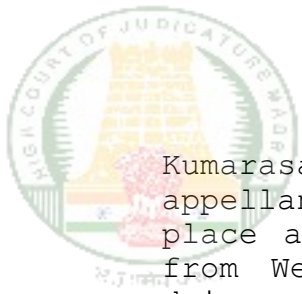
For R2 : Mr.K.Poomalai

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the order of dismissal dated 20.03.2019 made in M.C.O.P.No.88 of 2017 on the file of Motor Accident Claims Tribunal, Sub Court, Jayankondam.

2.The appellant is claimant in M.C.O.P.No.88 of 2017 on the file of Motor Accident Claims Tribunal, Sub Court, Jayankondam. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.06.2015.

3.According to the appellant, on 31.05.2015 at about 6.00 p.m., he drove a Xylo car from Jayankondam to Trichy along with the 1st respondent, the owner of the car to drop his friend



Kumarasamy in Trichy Airport and after dropping him, while the appellant and the 1st respondent were returning to their native place and were proceeding from Trichy No.1 tollgate to Lalgudi from West to East direction near Murugan koil tollgate, the driver of the vehicle, who was coming in the opposite direction, drove the same in a rash and negligent manner and about to hit the car belonging to the 1st respondent. The appellant, in order to avoid hitting the vehicle, turned the car on the Southern side, dashed against the tamarind tree and thus, the accident has occurred. Due to the accident, the appellant sustained grievous injuries all over the body and hence, he filed the above said claim petition claiming compensation against the respondents.

4.The 1st respondent, owner of the car remained exparte before the Tribunal.

5.The 2nd respondent/Insurance Company being insurer of the said car filed counter statement denying the averments made in the claim petition and stated that the appellant is the friend of the 1st respondent, who handed over the car to the appellant, he drove the same in a rash and negligent manner, dashed on the tamarind tree and invited the accident. The appellant borrowed the car from the 1st respondent and he stepped into the shoes of the owner of the vehicle. The appellant is not a third party. The appellant cannot be held to be employee of the owner of the vehicle. The appellant is the tort-feasor and he cannot claim any compensation and the 2nd respondent/Insurance Company is not liable to pay any compensation to the appellant. The 2nd respondent has also denied the age, avocation, income and nature of injuries sustained by the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1 and seven documents are marked as Exs.P1 to P7. The 2nd respondent/Insurance Company examined one Mr.Karthik, Legal Officer of the Insurance Company as R.W.1 and marked two documents as Exs.R1 and R2.

7.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition as the appellant is the tort-feasor.

8.The appellant has come out with the present appeal challenging the said order of dismissal dated 20.03.2019 made in M.C.O.P.No.88 of 2017 and for granting compensation.

9.The learned counsel appearing for the appellant contended that the Tribunal erroneously held that the appellant is the



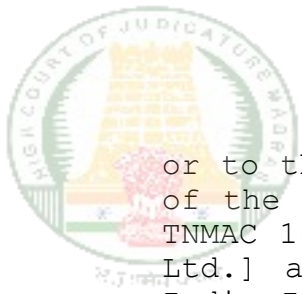
tort-feasor in a mechanical manner relied on F.I.R. and fine paid by the appellant to fix negligence. The contents of F.I.R. and the criminal proceedings are not conclusive proof for fixing negligence. The burden of proof is on the 2nd respondent to prove the negligence on the appellant. The Tribunal erroneously determined that the appellant stepped into the shoes of the owner of the vehicle and dismissed the claim petition without application of mind holding that the appellant is the tort-feasor. The learned counsel appearing for the appellant further referred to Ex.P5/Insurance Policy and contended that the 1st respondent has paid two additional premiums for paid driver as well as Personal Accident coverage for owner-driver of Rs.2,00,000/-. The Tribunal having held that the appellant stepped into the shoes of the owner, failed to consider Ex.P5/Insurance Policy, wherein the 1st respondent has paid Rs.100/- for Personal Accident coverage for owner-driver. The appellant in any event is entitled to a sum of Rs.2,00,000/- under Personal Accident coverage and prayed for allowing the appeal.

10.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant is owner of the Baba automobile body building works and more than seven persons are working under him. The appellant is not a paid driver and also not a third party. The appellant is the tort-feasor and he is not entitled to any compensation. The Tribunal considered all the materials placed before it and rightly dismissed the claim petition. There is no error in the award of the Tribunal and prayed for dismissal of the appeal.

11.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for the 1st respondent either in person or through counsel.

12.Heard through "Video-conferencing" the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

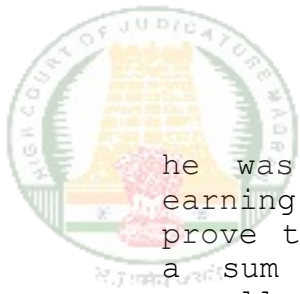
13.It is the case of the appellant that on 31.05.2015, he has taken a car from the 1st respondent, who is his friend and he drove the car along with the 1st respondent to drop the friend of 1st respondent in Trichy Airport. While they were returning, in order to avoid hitting another vehicle, which was coming in the opposite direction, the appellant turned the car to left side, dashed on the tamarind tree and thus, the accident has occurred. In the accident, the appellant sustained injuries and fractures and filed the claim petition under Section 166 of the Motor Vehicles Act claiming compensation for the injuries sustained in



or to the legal heirs of the owner in the case of death. In view of the judgments of the Hon'ble Apex Court reported in 2009 (2) TNMAC 169 (SC) [Ningamma & another v. United India Insurance Co. Ltd.] and (2020) 2 SCC 550 [Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another] and the judgment of this Court reported in 2013 (1) TN MAC 325 [Bajaj Allianz General Insurance Co. Ltd., Vs. C. Ramesh] referred to above, the appellant is entitled to compensation under Personal Accident coverage up to Rs.2,00,000/- as he stepped into the shoes of the owner. The contention of the learned counsel appearing for the 2nd respondent that the appellant is the owner of the vehicle or paid driver or third party and therefore, he is not entitled to claim compensation is not acceptable in view of the fact that the 1st respondent, owner of the vehicle has paid additional premium of Rs.100/- for owner - driver and in view of the judgments referred to above.

17.From the award of the Tribunal, it is seen that the Tribunal having held that the appellant stepped into the shoes of the owner and he is not a third party, erroneously failed to consider the fact that the 1st respondent paid additional premium for Personal Accident coverage and erroneously dismissed the claim petition. The said erroneous award is liable to be set aside and is hereby set aside. The appellant is entitled to compensation under Personal Accident coverage upto Rs.2,00,000/-.

18.As far as quantum of compensation is concerned, the appellant has claimed a sum of Rs.10,00,000/- for the injuries sustained in the accident. He suffered fractures of chest bone, left leg foot bone and lost eight teeth in the accident. He has taken treatment in ATLAS Hospital, Trichy, as in-patient from 01.06.2015 to 06.06.2015. He was referred to Medical Board, Perambalur. The District Medical Board, Government Head Quarters Hospital, Perambalur, examined the appellant and certified that the appellant suffered 10% disability. The appellant has not proved that he suffered any functional disability or loss of earning capacity due to the injuries and disability. In view of the same, the appellant is entitled to compensation towards disability only by adopting percentage method. The accident is of the year 2015 and hence, the appellant is entitled to a sum of Rs.4,000/- per percentage of disability. Thus, a sum of Rs.40,000/- (Rs.4,000/- X 10%) is awarded for 10% of disability. Considering the nature of injuries, disability and period of treatment taken by the appellant, Rs.20,000/-, Rs.10,000/-, Rs.10,000/-, Rs.10,000/-, Rs.2,000/- and Rs.15,000/- are awarded towards pain and suffering, attendant charges, extra nourishment, transportation, damage to clothes and loss of amenities respectively. The appellant claimed that



he was owning Baba automobile body building works and was earning a sum of Rs.20,000/- per month. The appellant failed to prove the same. Considering the avocation and date of accident, a sum of Rs.14,000/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have worked atleast for a period of six months. Thus, a sum of Rs.84,000/- (Rs.14,000/- X 6) is awarded towards loss of income. Thus, the appellant is entitled to the following compensation:

Sl. No.	Description	Amount awarded by this Court (Rs)
1.	Disability	40,000
2.	Pain and suffering	20,000
3.	Attendant charges	10,000
4.	Extra nourishment	10,000
5.	Transportation	10,000
6.	Damage to clothes	2,000
7.	Loss of amenities	15,000
8.	Loss of income	84,000
	Total	1,91,000

19. In the result, the Civil Miscellaneous Appeal is allowed. A sum of Rs.1,91,000/- is awarded as compensation together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any on the compensation awarded by this Court. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

kj



To

The Subordinate Judge
Motor Accident Claims Tribunal
Jayankondam.

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+1cc to Mr.V.M.Venkatramana, Advocate, S.R.No.7745

+1cc to M/s.K.Poomalai, Advocate, S.R.No.7741

C.M.A.No.2982 of 2019

EV[co]
NSK 21/10/2021