



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 29.04.2021

Delivered On : 24.06.2021

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1027 of 2013

Branch Manager,
The United India Insurance Co. Ltd.,
Dindigul.

..Appellant/2nd Respondent

Vs.

1.Ganesan
2.Chinna Muthu

..Petitioner/1st Respondent
.. 1st Respondents/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decretal award passed in M.C.O.P.No.147 of 2012 dated 20.11.2012 on the file of the MACT, Sub Court, Vedasanthur.

For Appellant : Mr.A.S.Mathialagan
For 1st Respondent : Mr.A.Hariharan
For 2nd Respondent : Set exparte

(Vide Court order dated 02.03.2018)

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.147 of 2012 dated 20.11.2012, on the file of the Motor Accident Claims Tribunal/Sub Court, Vedasanthur.

2.The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition. The appellant has filed a claim petition in M.C.O.P.No.147 of 2012, claiming compensation for the injuries sustained by the claimant in an accident that took place on 05.07.2008.

3.A brief substance of the claim petition in M.C.O.P.No.147 of 2012 is as follows:

On 05.07.2008, at about 06.00 p.m., when the claimant was travelling along the Dindigul - Karur Road near Dindigul bus stop, riding his bicycle along the left side of the road, the driver of the vehicle bearing Registration No.TN-57-L-0952 drove the vehicle in a rash and negligent manner dashed against the claimant. Thereby, the claimant sustained injuries. He was earning a sum of Rs.6,000/- (Rupees Six Thousand only) per month at the time of



accident. The claimant claimed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

4.The case of the respondents in the claim petition is as follows:

There was no damages to the tractor. Though FIR was registered against the driver of the tractor, the case was subsequently closed as 'mistake of fact'. The final report was filed by the Investigation Officer. The claimant rode the cycle in a rash and negligent manner suddenly crossed the road and dashed against the tractor. The driver of the tractor is not having valid driving licence. The claimant is not entitled to get any compensation.

5.After trial, the Tribunal has awarded a sum of Rs.90,900/- (Rupees Ninety Thousand and Nine Hundred only) as compensation to be paid to the claimant. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that it was the bicycle that caused the accident. After investigation, the police found that the FIR was false. The claimant dashed against the rear wheel of the tractor. The FIR was closed as 'mistake of fact'. The final report was marked as Ex.R2. There was no damages to the tractor and the Tribunal has failed to consider that the driver of the vehicle was not having the badge. The M.V. Report marked as Ex.R3. There was no valid driving licence for the driver. Since there was no badge endorsement in the driving licence of the claimant, the pay and recovery has to be ordered.

7.On the side of the first respondent, it is stated that the claimant sustained 39% disability. There is no possibility for the tractor to get any damages, while hitting a bicycle. R.W.1 is an official from the appellant company. He is not an eye witness. No independent witness was examined on the side of the appellant. It is stated that the M.V. Report was not marked by the appellant. The M.V. Inspector was not examined. The Investigation Officer was not examined to prove the final report, which was marked as Ex.R2. The claimant need not prove the guilty of the driver. It is sufficient if the claimant prove the preponderance of probability. In support of his contention, the judgment passed by the Hon'ble Supreme Court in the case of **Kusum Lata and others v. Satbir and others** reported in **2011 ACJ 926**, wherein it is stated as follows:

"9. There is no reason why the Tribunal and the High Court would ignore the otherwise reliable evidence of Dheeraj Kumar. In fact, no cogent reason has been assigned either by the Tribunal or by the High Court for discarding the evidence of Dheeraj Kumar.

the so-called reason that as the name of



Dheeraj Kumar was not mentioned in the FIR, so it was not possible for Dheeraj Kumar to see the incident, is not a proper assessment of the fact-situation in this case. It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

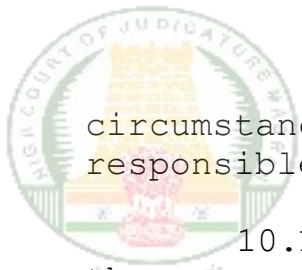
10. Reference in this connection may be made to the decision of this Court in *Bimla Devi and others v. Himachal Road Transport Corporation and others* [(2009) 13 SCC 530], in which the relevant observation on this point has been made and which is very pertinent and is quoted below:-

'In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.'

8. The learned counsel appearing for the appellant would rely upon the judgment passed by this Court in the case of ***the Managing Director v. S. Yobu*** reported in **2014 (1) TANMAC 295**, wherein it is stated as follows:

"7.R.W.1 lodged complaint with police, implicating an Ambassador Car excluding his bus. After investigation, the police referred his FIR as 'Mistake of Fact'. It is the conclusion/decision of the police. It cannot be substituted for the decision of the Tribunal. The Tribunal has to decide the question of negligence independently based on the evidence adduced before it. In doing so, it cannot try it like a complicated civil suit by a Civil Court or a criminal case in a Sessions Court. It must assess the evidence applying basic standards of proof. But, it need not follow the technical rules of evidence embodied in the Evidence Act."

9. It is seen that there was no damages to the tractor. There is no possibility of a tractor to get damages when dashing against a bicycle. The final report was not proved by examination of the Investigation Officer. The FIR is against the driver of the tractor. P.W.1 has deposed against the driver of the tractor. There was no contradictory evidence on the side of the respondent. P.W.1 is not an eye witness. In the above



circumstances, it is decided that the driver of the tractor is responsible for the accident.

10. Non validity of the driving licence was not proved by the respondents. Except a mere mentioning in the M.V. Report, there was no other evidence to prove that the driver of the tractor was not having a badge in his driving licence. The M.V. Inspector was not examined on the side of the appellant. Hence, it is decided that the claimant is entitled for compensation from the appellant.

11. There is no dispute regarding the quantum. The disability, which was fixed as 21 % by the Tribunal and the quantum fixed by the Tribunal under various heads are reasonable.

12. In view of the above, there is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.147 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vedasanthur. Hence, this Civil Miscellaneous Appeal is dismissed.

13. The first respondent is entitled to a sum of Rs.90,900/- (Rupees Ninty Thousand and Nine Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

14. The appellant is directed to deposit Rs.90,900/- (Rupees Ninty Thousand and Nine Hundred only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw his respective share with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. Excess amount, if any deposited shall be refunded to the appellant. The claimant is not entitled for interest for the default period, if there is any. No Costs.

Sd/-

Assistant Registrar (AD-II)

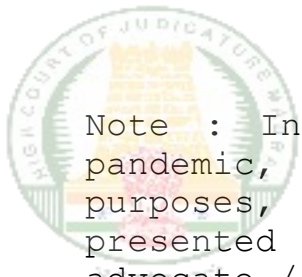
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/ /2021

Sub Assistant Registrar (CS)

MRN

<https://hcservices.ecourts.gov.in/hcservices/>



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To

1.The Motor Accidents Claims Tribunal, Sub Judge,
Vedasanthur.

2.The Section Officer, (2 Copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.S.MATHIALAGAN, Advocate (SR-20203[F] dated 25/06/2021)

C.M.A.(MD)No.1027 of 2013

24.06.2021

CN(09.07.2021) 5P 5C