



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	17.12.2020
DELIVERED ON	11.01.2021

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.A(MD) No.9 of 2011

and

CROS.OBJ(MD)No.6 of 2014

and

MP(MD)No.1 of 2011

C.Robert

.. Appellant/1st Respondent
in M.C.O.P
Respondent 1 in Cross Objection

vs.

1.Chelladurai

.. 1st Respondent/Petitioner
in M.C.O.P/
Cross Objector in Cross Objection

2.Kamalam

.. 2nd Respondent/2nd Respondent
in M.C.O.P/Respondent 2
in Cross Objection

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, and Cross Objection under order 41 Rule 22 of CPC, against the award and ex-order, dated 21.11.2009 made in M.C.O.P.No.184 of 2009, on the file of the Principal Subordinate Judge, I Additional Motor Accident Claims Tribunal, Nagercoil.

For Appellant : Mr.V.M.Balamohan Thampi
(Respondent 1 in Cross Objection)

For Respondents : Mr.I.Suthakaran
(for R1 in Appeal and Cross
Objector in Cross Objection)

No Appearance
(for R2 in Appeal and
Cross Objection)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/1st respondent against the award and ex-order dated 21.11.2009 made in M.C.O.P.No.184 of 2009, on the file of the



Principal Sub Judge, I Additional Motor Accident Claims Tribunal, Nagercoil.

2.The case of the claimant/first respondent before the Tribunal is that on 11.11.2005 at about 06.30 p.m, the claimant/first respondent and his friend were riding his Two-wheeler bearing Registration No.TN-X-8381 from Jawahar Street to Mela Ramanputhoor and at that time, a Jeep bearing Registration No.KL-7C-3124 came behind them and hit them, as a result of which, the claimant/first respondent sustained injuries and he was taken to Thilagaram Hospital and a complaint was registered on 13.11.2005 in Crime No.173 of 2005 on the file of the Traffic Police Station, Nagercoil, for the offences under Sections 279, 338 IPC and Section 134 of the M.V. Act. He was taking treatment as inpatient in Thilagaram Nursing Home, K.P.Road, Nagercoil, from 11.11.2005 to 12.12.2005. At the time of the accident, he was doing mason work and getting a daily salary of Rs.180/-. Because of the accidental injury, he is not in a position to continue the earlier job. So, he approached the Tribunal claiming a compensation amount of Rs.5,69,100/-(Rupees Five Lakhs Sixty Nine Thousand and One Hundred only).

3.In the counter of the appellant/first respondent, it is stated that the involvement of the vehicle is not correct and at the time of lodging the First Information Report, the informant has stated that one Ambassador Car hit them. The police had not properly investigated the matter. The offending vehicle was not properly identified. Even in the criminal case filed against the appellant/1st respondent, the appellant/1st was respondent acquitted. By taking into account the nature of occurrence, it is denied that only because of the negligence on the part of the appellant/1st respondent, the accident took place. Other facts mentioned in the above claim petition are denied.

4.Before, the Tribunal, the second respondent, namely, Kamalam, remained ex-parte. On the side of the claimant/first respondent, three witnesses were examined and nine documents were marked. On the side of the appellant/1st respondent and the 2nd respondent/2nd respondent, one witness was examined and one document marked.

5.At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the appellant/1st respondent and regarding the compensation on the basis of the injury suffered by the 1st respondent/claimant, the disability was assessed at 10% and a total compensation amount of Rs.1,04,445/- (Rupees One Lakh Four Thousand and Four Hundred and Forty Five only) was fixed with 7.5% p.a. interest and costs.



6.Challenging the same, the appellant/1st respondent filed the present appeal and the 1st respondent/claimant filed the cross objection before this Court claiming enhanced amount of compensation.

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7.The first argument advanced by the appellant/1st respondent is that the appellant/1st respondent vehicle was not involved in the accident and as per the information furnished in the First Information Report by the 1st respondent/claimant, one Ambassador Car caused the accident and sped away from the scene of occurrence. Even in the criminal case, which was registered against the appellant/1st respondent by the police, the appellant/1st respondent was ended in acquittal. So, the involvement of the appellant/1st respondent's vehicle is not proved. The correctness of the finding of the Tribunal is called for in question in this appeal.

8.P.W.1, who is the 1st respondent/claimant, would state that only the Jeep bearing Registration No.KL-7C-3124 was responsible for the accident and fled away from the scene of occurrence without stopping. As mentioned earlier in the counter, there is averment to the effect that the appellant/1st respondent's vehicle was not involved in the occurrence. During the cross-examination, it was suggested to him, the First Information Report has given information that one Ambassador Car hit the 1st respondent/claimant. He also stated that after hitting them, the vehicle fled away from the place of occurrence without stopping.

9.P.W.2, is the driver of the Two-Wheeler, in which, the 1st respondent/claimant travelled as a pillion rider. He would say that the appellant/1st respondent's vehicle hit them back, when he was about to turn to right after giving a hand signal. He would further say that at the time of statement, he has wrongly stated that one Ambassador Car hit them. Ex.P.1 is the First Information Report registered on the basis of the complaint given by P.W.2. In that complaint, it is stated that one Ambassador Car, which came from west direction, hit them. Ex.P.4 is the copy of the Inspection Report prepared by the Motor Vehicle Inspector, wherein, the offending vehicle has been noted to have suffered damage, on the front bumper, left hand side pressed, front left hand side, indicator broken and front left hand side mudguard dented. The inspection was carried on 13.02.2006. Similarly, the Two-wheeler, which was driven by P.W.2 also noted to have suffered damage on the right side crank case body, head light glass broken and head light body damaged, left side clutch lever. All these two documents would clearly show that only the appellant/1st respondent's vehicle was involved in the occurrence. Even though there is a delay of three months in making the inspection, there



is no explanation on the part of the appellant/1st respondent that his Jeep suffered damage due to some other reason. In the absence of any such explanation on the part of the appellant/1st respondent, in all probability, the occurrence would have been taken place as deposed by P.W.2 and P.W.1. So, simply because, the brand of the vehicle has been wrongly mentioned in the First Information Report, no advantage can be taken by the appellant/1st respondent. The police after investigation seized the vehicles and laid a charge sheet stating that the appellant/1st respondent was responsible for the accident. Even though in the criminal case, he was acquitted, from the evidence of P.W.1 and P.W.2, the nature of the occurrence is established that only the appellant/1st respondent was negligent in his driving, which can be corroborated from Ex.P.2, the Rough Sketch, wherein, the place of occurrence is noted on the southern edge of the East to West Road and the evidence of P.W.2 and P.W.1, they came from North to South Road and turned to right side, after showing signal and at that time, the appellant/1st respondent came in a wrong direction and hit P.W.2 and P.W.1. So, the findings of the Tribunal, on this aspect, requires no interference.

10. So, the argument of the appellant/1st respondent that his involvement in the occurrence is not established, cannot be accepted. It is, accordingly, rejected.

11. Ex.P.6, is the Wound Certificate, wherein, the Tribunal found that the 1st respondent/claimant suffered a lacerated injury measuring 12cm x 5cm x 5cm over medial aspect of lower half of right leg with open comminuted fracture right tibia middle third, distal third junction and fibula at same place and lacerated injury measuring 2.5 cm x 1 cm x 1 cm over meta carpal phalangeal joint of right little finger open fracture right little finger proximal phalanx. Ex.P.7 is the Discharge Summary, wherein, it is noted that he was admitted on 11.11.2005 and discharged on 12.12.2005 and underwent a surgery. Ex.P.9 is the Medical Bills. P.W.3-Doctor who assessed the disability, would say that because of the accidental injury, the 1st respondent/claimant suffered 10% partial permanent disability. The partial permanent disability certificate was marked as Ex.P.8. It is seen that the movement in the wound area was found restricted. So, the assessment of disability at 10% can be taken as reasonable.

12. With regard to the job, no document has been produced by the 1st respondent/claimant. But, the Tribunal has taken Rs.100/- per day on the ground that the daily wage would have earned Rs.100/- per day. According to the Tribunal, the 1st respondent/claimant would have suffered a loss of income for six months, due to the fracture and hence, a sum of Rs.18,000/- was awarded. The transport expenses was fixed at Rs.25,000/- and for



extra nourishment, Rs.3000/- was fixed and damages for the cloth, Rs.100/- was awarded. As per Ex.P.9, the total medical expenses has been calculated as Rs.45,845/-. For pain and sufferings, Rs.25,000/- has been awarded and for 10% disability, the Tribunal awarded a sum of Rs.10,000/-. In all these aspects, except the compensation for the disability, other heads can be confirmed. So, the compensation for 10% disability can be fixed at Rs.20,000/-, by taking Rs.2,000/- as compensation for 1% percentage of disability, the award passed by the Tribunal requires modification and the Cross-Objection is allowed to that extent.

13.In the result, the Civil Miscellaneous Appeal stands dismissed. No costs. The Cross-Objection in CROS.OBJ(MD)No.6 of 2014 is partly allowed and raising the compensation amount from Rs.1,04,445/- to Rs.1,36,945/-. The total amount shall be deposited by the appellant/1st respondent along with interest at 7.5% p.a. from the date of petition, less the amount already deposited, if any, within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition in M.P.(MD)No.1 of 2011 is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sjj

To

1.The Principal Subordinate Judge,
(I Additional Motor Accident Claims Tribunal),
Nagercoil.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.I.Suthakaran, Advocate (SR-904[F] dated 18/01/2021)

Judgment Made in
C.M.A(MD) No.9 of 2011
11.01.2021

KM (11.02.2021) 5P 5C