BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD) No.707 of 2010
and
M.P.(MD) Nos.1 & 2 of 2010

The Oriental Insurance Co. Ltd.,
Bali Towers
First Floor, No.1, Abdul Razack Street
Saidapet, Chennai ... Appellant/2nd Respondent

-vs-

1.M.Kalimuthu ...1st Respondent/Petitioner

2.S.Nagaraj ...2nd Respondent/1st Respondent
(2nd Respondent remained exparte before the lower Court)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 22.01.2010 in M.C.O.P.No.360 of 2007, on the file of the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Karur.

For Appellant : Mr.K.Bhaskaran

For Respondents : Mr.B.Janeth Ahamed for R1
Ex parte – R2

J U D G M E N T

This civil miscellaneous appeal arises out of the Award, dated 22.01.2010, passed in M.C.O.P.No.360 of 2007, by the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate Court, Karur.

2. This is a case of injury. The first respondent herein is said to have met with an accident, which took place on 08.06.2007. It is the case of the claimant that on the date of the accident, he was travelling as a passenger in a Bus bearing registration TN47 K5517 on Vedasandur – Dindugul Road. When the Bus was proceeding near Shanmugavel Mills Bus Stop, a Lorry bearing registration No.TDF2293, owned by the second respondent and insured with the appellant – Insurance Company, which was proceeding to Dindugul, overtook the Bus and in that process, it hit against the backside of the Bus. Resultantly, the claimant, who travelled in the Bus, sustained injuries all over the body and immediately, he was carried to City Hospital, Dindugul, where he took treatment as inpatient from 08.06.2007 to 26.06.2007. According to the claimant, since the accident occurred due to the negligence of the driver of the Lorry, he is entitled for compensation of Rs.5,00,000/-.

3. The appellant - Insurance Company filed a counter disputing the averments made in the claim petition. It is stated that the claimant alone was responsible for the accident, since except the claimant no other passengers sustained injuries in the accident and the claim is excessive and exorbitant. It is further stated that the driver of the Lorry did not possess valid and effective driving licence at the relevant point of time. Hence, the insurer cannot be made liable to pay compensation.

4. The parties adduced oral and documentary evidence. On the side of the claimant, three witnesses were examined and thirteen documents were marked and on the side of the Insurance Company, three witnesses were examined and twelve documents were marked.

5. The Tribunal, upon consideration of the oral and documentary evidence adduced by the parties, came to the conclusion that the accident occurred due to the negligent driving of the driver of the Lorry and awarded compensation of Rs.1,15,500/- together with interest at the rate of 7.5% per annum. Questioning the Award, the present appeal has been filed.

6. Heard Mr.K.Bhaskaran, learned counsel appearing for the appellant - Insurance Company and Mr.B.Janeth Ahamed, learned counsel appearing for the first respondent - claimant and perused the materials available on record.

7. In the matter on hand, the First Information Report (Ex.P1) came to be registered on the basis of the complaint lodged by P.W.2. In the complaint, P.W.2 has stated that on 08.06.2007, at about 09.30 a.m., when he was proceeding from Karur to Vedasandur, the Lorry bearing registration No.TDF2293, which was coming behind the Bus, suddenly turned to the right side and hit against the backside of the Bus. After investigation, Final Report (Ex.P5) was also filed against the driver of the Lorry. It appears that the driver of the Lorry pleaded guilty and paid the fine amount. The Judgment in the criminal case was marked as Ex.P6. Since no contra evidence was let in to prove the defence taken by the insurer of the offending vehicle with regard to negligence, the Tribunal came to the conclusion that the accident had happened only due to the rash and negligent driving of the driver of the Lorry. I find no illegality or irregularity in the conclusion of the Tribunal.

8. The claimant produced Wound Certificate (Ex.P2), which shows that he sustained three injuries. Exs.P7 and P8 are the Bills for medical expenses. P.W.3 - Doctor assessed the disability of the claimant at 30% and issued Disability Certificate (Ex.P12) and X-Ray (Ex.P13). Based on the evidence of P.W.3 and Ex.P12, the Tribunal awarded Rs.60,000/- towards permanent disability by applying Rs.2,000/- per percentage of the disability. Discharge Summary (Ex.P9) shows that the claimant was admitted in the Hospital on 08.06.2007 and discharged on 26.06.2007. In the meanwhile, he was also underwent surgery on 08.06.2007. Taking note of all these aspects, the Tribunal awarded Rs.60,000/- for incapacity; Rs.5,000/- for pain and suffering; Rs.5,000/- for transport and nutrition expenses; Rs.35,500/- for medical expenses as per Exs.P7 and P8 and Rs.10,000/- for removal of nails and screws fixed in the left hand of the injured, in toto, the Tribunal awarded Rs.1,15,500/-. In my considered view, the award of the Tribunal is fair and reasonable and it does not warrant any interference of this Court.

9. The main contention of the appellant - Insurance Company is that the driver of the Lorry was not possessing valid and effective driving licence at the time of the accident. The Tribunal having found that the claimant is a third party and the offending vehicle was driven by a person, who was not possessing valid driving licence at the relevant time, directed the appellant - Insurance Company to satisfy the award amount at the first instant and thereafter, recover it from the owner of the offending vehicle / second respondent herein. Hence, I find no valid reason to interfere with the said pay and recover direction issued by the Tribunal.

10. In fine, the civil miscellaneous appeal fails and the same is dismissed. Since the appeal is dismissed, the appellant - Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the

Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:
1.The Chief Judicial Magistrate,
   Motor Accident Claims Tribunal,
   Karur.

2.The Record Keeper,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.(2C)

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KK(20.05.2021) 4P 4C