



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 25.03.2021
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THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

C.M.A(MD)No.780 of 2010

and

M.P(MD)No.2 of 2010

The New India Assurance Co. Ltd.,
2486, Rekha Towers,
Kamarajar Salai,
Madurai.

.. Appellant/2nd Respondent

vs.

1.Rajkumar
2.R.Kannan
3.Layola

..1st Respondent/Petitioner
..2nd Respondent/1st Respondent
..3rd Respondent/3rd Respondent

4.United India Insurance Co. Ltd.,
23 E, EVR Road, Pudur,
Trichy - 17.

..4th Respondent/4th Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the decree and judgment dated 09.09.2009 made in MCOP No.35/2007, on the file of the Motor Accident Claims Tribunal, Sub-Court, Kulithalai.

For Appellant : Mr.B.Vijay Karthikeyan
For Respondents : Mr.D.Srinivasa Raghavan (for R1)
No appearance for R2 to R4

J U D G M E N T

This appeal has been preferred by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal, Sub-Court, Kulithalai in MCOP No.35 of 2007.

2.The brief facts which are necessary for the disposal of this appeal would run thus:-

This is a case of injury. The first respondent Rajkumar was the pillion rider of the two wheeler bearing registration No.TN-45-AD-6768, in which, one Sahayaraj was the rider. According to them, when they were proceeding on Trichy-Dindigul Highways and they were near Thomas Nagar, which is situated in between Manapparai and Vaiyampatti, a van bearing registration No.TN-58-E-1469, came in a high speed, due to which, the rear left side tyre got burst, so



driver of the van lost control of the vehicle and it went in a zigzag manner and eventually capsized in the middle of the road. This incident occurred at 11.00 p.m on 12.09.2006 and the van was lying in the middle of the road without any light and indications and there was no street light also at the relevant time and hence, the two wheeler hit against the van. In the accident, both the rider and the pillion rider sustained injuries and immediately, they were removed to Government Hospital, Manapparai, therefrom, they were taken to the Government Hospital, Trichy. Since the accident had happened due to the negligence of the driver of the van, its owner and the insurer are liable to pay compensation.

3. In the counter filed by the appellant, the age, occupation and income of the claimant were disputed and denied. It is further stated that the rider of the two wheeler gave complaint to the police, wherein it is stated that the said van was moving without control after bursting its tyre and thereafter, the van dashed against the two wheeler. As two different versions were given in respect of one and the same accident, there is a doubt with regard to the occurrence, in which, the van is said to have involved. It is further stated that the driver of the van was going slowly in a responsible manner at the time of accident, but the rider of the two wheeler without control came in a rash and negligent manner and dashed against the van and therefore, the appellant is not liable to pay any compensation to the claimant.

4. Before the Tribunal, on behalf of the claimant, two witnesses were examined and 6 exhibits were marked. The appellant examined one Ilangovan as R.W.1, but no documentary evidence was produced. On appreciation of evidence adduced by the parties, the Tribunal came to the conclusion that due to the negligent act of the driver of the van, this accident had taken place and awarded compensation of Rs.86,700/- with interest at the rate of 6% per annum. Questioning the award, the present appeal has been filed.

5. Mr. B. Vijay Karthikeyan, learned counsel for the appellant would argue that the Tribunal went wrong in fastening liability on the insurance company to pay compensation without properly appreciating the evidence available on record. It is further submitted that the rider, who had driven the motorcycle in a rash and negligent manner dashed against the capsized van, was responsible for the accident and therefore, the appellant cannot be made liable to pay compensation. Further, the complaint preferred by the claimant was treated as 'mistake of fact' and prayed to set aside the award.

6. Per contra, the learned counsel for the respondent/claimant Mr. D. Srinivasa Raghavan would argue that the claimant has proved the involvement of the offending vehicle in the accident and award of



the Tribunal is also reasonable and hence, no interference of this Court is required in this appeal.

7. Heard the rival submissions and carefully gone through the evidence available on record.

8. In the present case, the rider as well as the pillion rider of the two wheeler TN-45-AD-6768 have sustained injury in the motor vehicle accident that had taken place on 12.09.2006 at 11.00 p.m. It is the specific case of the claimant that a load-van was driven by its driver in a rash and negligent manner. Due to which, one of the tyres got burst and thereafter, the driver of the vehicle could not control it and it went in zigzag manner and capsized in the middle of the road. It is also specifically stated that there was no proper light or other indications in the offending van. It is also stated that there was no street light, hence, the rider of the two wheeler rammed the van and thereby sustained injuries. In order to establish the same, the claimant gave evidence as P.W.1 and marked Ex.P.1, First Information Report. R.W.1, who was the Investigating Officer of the case, deposed that the criminal case was registered against the driver of the van and he had also pleaded guilty and paid the fine amount. On the basis of the above evidence, the Tribunal held that the occurrence had taken place due to the negligence of the driver of the van. In view of the above facts, I find no force in the submission of the learned counsel for the appellant and hence, the finding of the Tribunal is confirmed.

9. Insofar as the quantum is concerned, the claimant has stated that he sustained grievous injuries. In order to prove the same, Ex.P.2 Wound Certificate was produced. It is stated therein that the claimant suffered one grievous injury. P.W.2, after verifying the medical records of the claimant, issued Ex.P.5 Disability Certificate to the effect that he suffered 39% disability. Ex.P.6 is the X-ray. However, the Tribunal has taken disability as 25% and by applying Rs.2,000/- for per percentage, awarded Rs.50,000/- for permanent disability; Rs.30,200/- towards medical expenses based on Ex.P.4; Rs.5,000/- for pain and suffering; Rs.1,000/- for extra-nourishment and Rs.500/- was awarded for transport expenses. In total, the Tribunal has awarded Rs.86,700/-. In my view, the award is a reasonable.

10. In such view of the matter, the Civil Miscellaneous Appeal is dismissed as devoid of merits. 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 order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together



with proportionate interest and costs. No costs. Consequently,
connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

To

- 1.The Motor Accident Claims Tribunal,
Sub-Court, Kulithalai.
- 2.The Record Keeper, (2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-13824[F] dated
26/03/2021)

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and
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KB (28.04.2021) 4P 5C