



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 19.07.2021
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI
C.M.A.(MD)No.432 of 2013

WEB COPY

R.Thiyagarajan .. Appellant/Claimant
Vs.
1.Anbalagan
2.Chandramohan
3.The Oriental Insurance Co. Ltd.,
rep. By its Branch Manager,
Kumbakonam. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 28.03.2003 made in M.C.O.P.No.43 of 2003, on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge cum Chief Judicial Magistrate), Thanjavur at Kumbakonam.

For Appellant : Mr.A.Thiruvadikumar
For 1st Respondent : Dismissed vide order dated 26.06.2018
For 2nd Respondent : No Appearance
For 3rd Respondent : Mr.C.Jawahar Ravindran

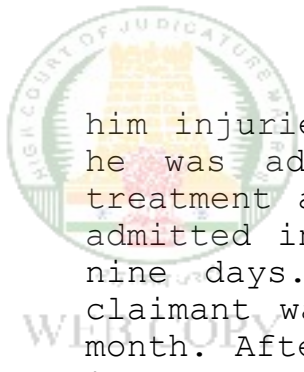
ORDER

This Civil Miscellaneous Appeal has been filed against the judgment and decree passed in M.C.O.P.No.43 of 2003 dated 28.03.2003 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge cum Chief Judicial Magistrate), Thanjavur at Kumbakonam.

2.The appellant herein is the claimant and the respondents herein are the respondents in the claim petition. The appellant herein has filed a claim petition in M.C.O.P.No.43 of 2003, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 02.07.2000. The Tribunal has awarded a sum of Rs.45,000/- (Rupees Forty Five Thousand only) as compensation. Against which, the appellant has filed the present appeal.

3.A brief substance of the claim petition in M.C.O.P.No.43 of 2003 is as follows:

On 02.07.2000, the claimant was riding his motorcycle bearing registration No.TN-49-W-9130. At that time, another motorcycle bearing registration No.TN-49-O-0950 was driving by its driver in a rash and negligent manner and dashed against the claimant and caused



him injuries. The claimant was admitted in Vijay Hospital and then he was admitted in Government hospital in Kumbakonam and took treatment as 'in patient' for three days and then the claimant was admitted in S.N.S. Hospital as 'in patient' and took treatment for nine days. He undergone surgery and ST rod was implanted. The claimant was working as the labour and was earning Rs.3,000/- per month. After the accident, the claimant is not able to do his work in a proper manner and he filed this petition for compensation of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only).

4.The brief substance of the counter filed by the third respondent herein is as follows:

The claimant has to prove his age, income, profession, mode of accident and treatment particulars. The claimant is not having valid driving licence. The third respondent is not a necessary parties. There was no insurance policy and prayed the petition to be dismissed.

5.On the side of the claimant, three witnesses were examined and 18 documents were marked. On the side respondents in the claim petition, no witness was examined and no document was marked. After considering both the sides, the Tribunal awarded a sum of Rs.45,000/- (Rupees Forty Five Thousand only) as compensation. Against which, the appellant has preferred this appeal.

6.On the side of the appellant, it is stated that without considering the gravity of injury, the Tribunal has awarded Rs.5,000/- (Rupees Five Thousand only) as compensation for pain and suffering and the same has to be enhanced. The Tribunal has to consider the period of treatment and ought to have awarded compensation towards extra nourishment and attender charges. There is lesser movement on the right knee. There is no permanent disability. The Tribunal failed to consider these things. The Tribunal has awarded a sum of Rs.16,000/- (Rupees Sixteen Thousand only) for disability and the same has to be enhanced. The Tribunal failed to consider the future medical expenses and failed to award Rs.23,000/- (Rupees Twenty Three Thousand only) as future medical expenses and prayed the award to be enhanced.

7.On the side of the respondents, it is stated that there is no valid policy. The owner failed to produce any copy of the policy. The Tribunal fixed the liability on the first respondent, who is the owner of the vehicle and prayed the appeal to be dismissed.

8.A perusal of the records reveals that the case against the first respondent was dismissed for default by this Court on 26.06.2018. The appellant has not taken any steps to restore against the first respondent. If the appeal against the first respondent is dismissed, there is no necessity for the third respondent to indemnify the first respondent. The copy of the policy was not filed



and the third respondent is not way responsible for payment of compensation. Since the case against the first respondent was already dismissed by this Court, nothing survives for adjudication in this appeal.

9. In the above circumstances, this Civil Miscellaneous Appeal is dismissed and the award passed in M.C.O.P.No.43 of 2003 dated 28.03.2003 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge cum Chief Judicial Magistrate), Thanjavur at Kumbakonam is confirmed. No Costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Mrn

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal,
(Additional District and Sessions Judge cum Chief Judicial Magistrate),
Thanjavur at Kumbakonam.

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

C.M.A. (MD)No.432 of 2013
19.07.2021

RD(25.08.2021) 3P 4C