IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.12.2021

Delivered on : 04.02.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.M.A.No.1686 of 2018
and
C.M.P.No. 14605 of 2018

New India Assurance Company Limited,
No.1, Officer's Line, Vellore. ...Appellant/R2

Versus

1. S. Mahalingam ...R1/Petitioner
2. Vijaya Kumar ….R2/R1
3. United India Insurance Company Limited,
Katpadi Road, Vellore.
...R3/R2/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No. 1723 of 2013, dated 15.09.2017 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur, Vellore District.

For Appellant	:	Mr.J.Chandran
For R1	:	Ms.M.Malar
For R2	:	No Appearance
For R3	:	Mr. M.J. Vijayaraghavan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 15.09.2017 made in M.C.O.P.No.1723 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Tirupattur.

2. The New India Assurance Company Limited, Vellore, with whom the car bearing Reg.No.TN-23-L-6677 owned by the second respondent in this appeal has been insured, which is one of the

vehicles involved in the accident in question, has come forward with this appeal, questioning the liability as well as the quantum of compensation awarded by the Tribunal.

3. Before the Tribunal, the first respondent herein, as claimant, has filed M.C.O.P.No. 1723 of 2013. It is stated in the claim petition that he has sustained injuries in the motor accident that had occurred on 30.07.2013. According to the first respondent/claimant, he is the owner-cum-driver of the Autorickshaw bearing Regn.No.TN-23-BX-4761. On 13.07.2013 at about 8.30 p.m., he was riding his Autorickshaw from Ashok Nagar Junction, Tirupattur to Jolarpettai main road. At that time, a Maruthi Car owned by the second respondent in this appeal, came from the opposite direction and hit the Autorickshaw. In the impact, the first respondent/claimant is said to have sustained grievous injuries on his forehead, lips, legs and all over his body. It is also stated that the auto rickshaw owned by him, has also been damaged extensively. Soon after the accident, he was taken to Government Hospital, Tiruppattur, from where he was referred to Government Hospital, Dharmapuri, wherein, he was admitted as in-patient. According to the claimant, he was 30 years old at the time of accident. He has sustained injuries all over his body and he could not eke out his livelihood. Therefore, he has filed the claim petition claiming for a sum of Rs.5,00,000/- as compensation.

4. The claim petition was resisted by Insurance Company by filing a counter statement. According to the first respondent, Ex.P1, the First Information Report as well as the charge sheet in this case, have been filed against the claimant which would show that he is the aggressor, who had contributed to the accident. Further, at the time of admission of the claimant in the hospital, the Doctor who treated him has specifically stated that the claimant was under the influence of alcohol. Therefore, the Insurance Company contended that the first respondent/claimant is not entitled for any compensation. The Insurance Company also denied, the age, income and other particulars furnished by the claimant in the cliam petition and he prayed for dismissal of the claim petition.

5. Before the Tribunal, the 1st respondent/claimant examined himself as P.W.1 and 19 documents were marked as Exs.P1 to P19. On behalf of the third respondent, one Mr.Selvanathan was examined as R.W.1, Mr.Sampath was examined as R.W.2 and Mr.Vajiravel was examined as R.W.3 and 8 documents were marked as Exs.R1 to Ex.R8. Prominent among the documents marked by the claimant are Ex.P2, copy of the complaint given by the claimant

while he was taking treatment in the hospital and Ex.P9/Disability Certificate issued by the medical board.

6. The Tribunal brushed aside the arguments advanced on behalf of the appellant/Insurance Company to the effect that, merely because the First Information Report and the charge sheet were filed against the claimant, it cannot ifso facto prove that the claimat only had contributed for the accident. For this purpose, the Tribunal has relied upon the decision of the Hon'ble Supreme Court in the case of Meera Devi and another v. H.R.T.C. and another reported in 2014 (1) TN MAC 456. For the same proposition, the Tribunal has also relied on in the case of New India Assurance Company Limited v. G.Vijaya Kandiban and Another reported in 2007 ACJ 2824. Following the ratio laid down in the aforesaid decisions, the Tribunal has rejected the argument of the learned counsel for the appellant/Insurance Company that the First Information Report as well as the charge sheet registered against the first respondent/claimant, cannot be taken into consideration in a petition filed under Section 173 of the Motor Vehicles Act, seeking compensation for the injuries sustained in the accident. Similarly, the Tribunal has also rejected the argument that the Doctor, while treating the claimant, has smelled alcohol and that the claimant was in an inebriated condition. The Tribunal pointed out that the opinion of the Doctor without performing the mandatory procedures to find out the alcohol contents, as contemplated under Section 185 of the Motor Vehicles Act, is not legally sustainable. Therefore, the Tribunal opined that the accident was as a result of the rash and negligent driving of the driver of the car, insured with the appellant. In support of this conclusion, the Tribunal has relied on Ex.P2- complaint given by the claimant against the driver of the car while he was in hospital. As regards the quantum of compensation, the Tribunal awarded a total sum of Rs.3,16,089/- under various heads.

7. Assailing the award dated 15.09.2017 passed by the Tribunal in M.C.O.P.No.1723 of 2013, the learned counsel for the appellant contended that the First Information Report is the best piece of document to be relied on to conclude the manner of accident, the person who is responsible for the accident and other prominent futures. It was a document which has emanated at the earliest point of time. The charge sheet was filed by the Investigating Officer based on the FIR under Ex.P1. There is no reason for the Tribunal to simply brush aside these vital documents, which shows that it was the claimant/first respondent who has contributed for the accident. However, the Tribunal disregarded these documents and concluded that the driver of the

car is responsible for the accident. Even though the Doctor has clearly recorded that the claimant was drunk at the time of accident, that was also rejected by the Tribunal, without any basis. These documents clearly prove the negligence on the part of the claimant in driving the Auto rickshaw. As the Tribunal failed to consider these documents, it warrants interference by this Court. The learned counsel further contended that, a sum of Rs.1,80,000/- awarded by the Tribunal towards permanent disability, is on the higher side and it warrants reduction. The learned counsel for the appellant, therefore, submitted that the award passed by the Tribunal is legally not sustainable and therefore, he prayed for allowing this appeal.

8. On the above submissions, this Court heard the learned counsel for the first respondent/claimant and perused the records.

9. This is a case of injury. The claim petition was filed by the claimant as against the owner and Insurance Company of the car as well as the Insurance Company of the Auto rickshaw driven by the claimant and the Tribunal dismissed the claim petition as against the third respondent, namely United India Insurance Company Limited, Vellore, Insurer of the Auto Rickshaw. The Tribunal awarded a total sum of Rs.3,16,089/- as compensation for the claimant.

10. The first and foremost contention raised by the appellant-Insurance Company is that the Tribunal brushed aside Ex.P1-First Information Report registered against the claimant as well as the charge sheet filed by the Investigating Officer. It is no doubt true that the First Information Report as well as the charge sheet were filed against the claimant herein. However, it is well settled that the First Information Report/Charge sheet cannot be wholly relied upon to conclude the manner of accident. At the behest, the First Information Report can be recorded as a piece of evidence to be looked into as to how the accident had occurred. In this case, in the accident, the claimant suffered injuries and he was taken to hospital. Conveniently, the first respondent/Insurance Company had given the complaint as against the claimant. However, the claimant, while he was in hospital, has sent a complaint under Ex.P2 and it is not in dispute. It is in those circumstances, the Tribunal was right in holding that merely because the First Information Report and charge sheet were filed as against the claimant, ipso-facto it will not be a proof to show that it was the claimant who had contributed to the accident. Similarly, the Tribunal, by placing reliance on

Section 185 of the Motor Vehicles Act, refused to accept the plea of the appellant herein that the claimant was under the influence of alcohol at the time of accident. To prove that the claimant was under the influence of the accident, necessary procedures have to be followed to show the contents of the alcohol consumed by the claimant by carrying out certain tests. In the absence of the same, the Tribunal is right in holding that there is no proof to show that the claimant was under the influence of alcohol at the time of accident. The Tribunal has also taken into account the damages caused to the Auto rickshaw, as also the injuries sustained by the claimant from Ex.P7-Medical Report and Ex.P10-Medical Report. Taking note of these documentary evidence, the Tribunal came to a definite conclusion that it was the driver of the car who had driven it in a rash and negligent manner and caused the accident. This Court is in complete agreement with such a conclusion reached by the Tribunal.

11. The judgment relied on by the learned counsel for the appellant in the case of Nandakumar v. Managing Director, Thanthai Periyar Transport Corporation reported in 1992-1.L.W. That case relates to an application, which arises under Section 92-A of the Motor Vehicles Act relating to no fault liability and in the present case it does not relate to compensation payable under no fault liability and therefore, the decision relied on by the learned counsel for the appellant/Insurance Company cannot have any application to this case.

12. Similarly, the other judgment relied on by the counsel for the appellant in the case of IFFCO Tokyo General Insurance Company Limited vs. Pearl Beverages Limited reported in 2021 LLJ Supreme Court Page No. 209 also has no application to this case. First of all the said decision arise out of an order passed by the National Consumer Disputes Redressal Commission rejecting the contention of the Insurance Company that the person, who drove the vehicle at the time of accident, had consumed liquor and therefore, as per Clause 2c of the Contract of Insurance, the Insurance Company is not entitled to pay compensation. Before the Consumer Forum, the driver in his counter affidavit has stated that he did not consume alcohol at all at the time of accident. In that case, the Honourable Supreme Court held that the reliance placed on a first information report in a criminal case is always distinguishable from it's application to a consumer case. At the same time, the Honourable Supreme Court found that in the criminal case before the Criminal Court, the driver accepted that he was under the influence of alcohol at the time of accident and prayed for imposing a lenient punishment. The Honourable Supreme Court,

finding that the affidavit of the driver filed before the Consumer Forum is contrary to the pleading of guilt in the Criminal Court, held that the assertion of the driver that he did not consume alcohol is false. Ultimately, it was observed in para No. 95 and 96 of the judgment that under Section 185 of the Motor Vehicles Act, a certain percentage of alcohol is to be found before a person is to be prosecuted for the offence of drunken driving. However, law does not prohibit driving after consuming liquor and all that is prohibited is the percentage of liquor should not exceed 30 mg, per 100 ml of blood. Therefore, it was held that only where the act of driving attracts the wrath of Section 185 of the Motor Vehicles Act, an offence is committed thereunder and that the opprobrium of the exclusion clause in the contract of insurance, for own damage, is attracted. In the present case, it was merely stated by RW1 that when he recorded the statement of the Doctor, he has informed him that he smelled alcohol from the injured. However, the Doctor, who has given such a statement was not examined before the Tribunal. Therefore, the Tribunal rightly held that Section 185 of The Motor Vehicles Act has not been complied and there was no documentary evidence such as lab report etc., is forthcoming. In such view of the matter, the decision rendered by the Honourable Supreme Court has no application to this case.

13. As regards the quantum of compensation it is seen that the claimant suffered 60% disability, as has been stated in Ex.P19. This is also supported by Ex.P14 and Ex.P15 wound certificates. The claimant was admitted in the Government General Hospital, Dharmapuri, and even after he was discharged, it is stated that he has taken treatment in a proving period. The claimant was the Auto driver and he is also the owner of the Auto rickshaw in question. He was aged 30 years at the time of accident.

14. Having regard to the above facts, the Tribunal awarded a sum of Rs.3,000/- per percentage of disability and awarded a sum of Rs.1,80,000/- as compensation thereof. The Tribunal further awarded a sum of Rs.75,000/- towards pain and suffering and in total only a sum of Rs.3,16,089/- was awarded by the Tribunal as under:-

Sl.No.	Description	Amount (Rs)
1.	Permanent Disability	1,80,000/-
2.	Pain and Sufferings	75,000/-
3.	Extra Nourishment	5,000/-
4.	Transportation	3,000/-

Sl.No.	Description	Amount (Rs)
5.	Medical Expenses	770/-
6.	Attender Charges	600/-
7.	Loss of Income	26,000/-
8.	Loss of Amenities	10,000/-
9.	Damages to the Auto	15,719/-
	Total	3,16,089/-

15. On a cumulative consideration of the various amounts awarded by the Tribunal, this Court is of the view that the compensation so awarded by the Tribunal is in consonance with the period of hospitalization, nature of injuries, age, occupation and earning capacity of the claimant. Therefore, this Court does not find any reason to interfere with the impugned award passed by the Tribunal in any manner.

16. In such view of the matter, this 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(CS-VI)

// True Copy //

Sub Assistant Registrar

msm

To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
at Tirupattur, Vellore District.

Copy to:
The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mrs.M.Malar, Advocate SR.No.7298
+1cc to Mr.J.Chandran, Advocate SR.No.7664

C.M.A.No.1686 of 2018

KV(CO)
CB(17/02/2022)