



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03.02.2022
Delivered on	28.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.Nos.3276 and 4715 of 2019
and
C.M.P.No.26799 of 2019

C.M.A.No.3276 of 2019

Mohankumar

... Appellant / Petitioner

Vs.

1. M/s MAV CHIT Private Ltd.,
80, Sastri Road, Thennur, Trichy.

2. United India Insurance Company Ltd.,
Kumar Complex, Tiruchengode.

3. Jayanth

... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to enhance the award in the Judgment and Decree dated 16.04.2019 made in MACTOP No.562 of 2011 on the file of the Motor Accidents Claims Tribunal/Sub Court, Sankari.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.S.Arunkumar for R2
No appearance for R1
Not Ready in notice R3

C.M.A.No.4715 of 2019

United India Insurance Co. Ltd.,
Kumar Complex,Tiruchengode.

... Appellant / 2nd Respondent



Vs.

1.Mohankumar

...1st Respondent / Petitioner

2.M/s MAV Chit Pvt Ltd.,
At No.80, Sastri Road,
Thinnur, Trichy.

3.Jayanth

...2nd & 3rd Respondents / 1st & 3rd Respondents

4. M/s.Bajaj Allianz General Insurance Co. Ltd.,
42-A, 1st Floor, SAR Complex,
Santhy Road, Erode.

...Respondent

(4th respondent is impeaded vide order
dated 28.02.2022 made in CMP No.3460 of 2021)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Award and Decree dated 16.04.2019 made in MACTOP No.562 of 2011 on the file of the Motor Accidents Claims Tribunal/Sub Court, Sankari.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.T.S.Arthanareeswaran for R1
No appearance for R2
Mr.J.Michael Visuvasam for R4

COMMON JUDGMENT

V.SIVAGNANAM, J.

CMA No.3276 of 2019 is filed by the claimant being dissatisfied with the award of the Tribunal passed in MCOP No.562 of 2011 dated 16.04.2019. CMA No.4715 of 2019 has been preferred by the Insurance Company assailing the award passed in the same MCOP. For the purpose of clarity, the parties are referred to as per their rank before the Tribunal.

2.The facts of the case in nutshell:-

On 13.03.2011, at about 06.00 p.m, the claimant was riding a Honda Shine motorcycle bearing Reg.No.TN-34-L-1989 on Vellore - Thiruchengode Road. When he was nearing at Puliyampatti Bus Stop, a Fort Fiesta Car bearing Reg.No.TN-45-AF-8686 belonging to the first respondent driven by its driver in a rash and negligent manner, hit against the claimant's vehicle. In the accident, the claimant sustained grievous injuries and fracture



on his right leg, right hand and all over body. Immediately, he was taken to the Ganga Medical Centre & Hospital (P) Limited, Coimbatore, where he took treatment as an inpatient from 13.03.2011 to 26.03.2011 and spent nearly Rs.2,30,000/- towards medical expenses. Alleging that the accident had occurred only due to the rash and negligent driving of the driver of the Car, the claimant laid a claim petition before the Tribunal. Though he claimed compensation of Rs.25,00,000/-, the Tribunal has awarded Rs.27,10,000/-.

3.The learned counsel appearing for the Insurance Company submitted that the finding of the Tribunal that the accident was caused due to the rash and negligent driving of the driver of the Fort Fiesta Car bearing Reg.No.TN-45-AF-8686 is an error and against the evidence on record. He further submitted that in this accident, three vehicles are involved, viz., Hero Shine motorcycle bearing Reg.No.TN-34-L-1989 belonging to the claimant, Yamaha Libra motorcycle bearing Reg.No.TN-33-AC-5230 belonging to the third respondent and Fort Fiesta Car bearing Reg.No.TN-45-AF-8686 belonging to the first respondent. The appellant in CMA No.4715 of 2019 is the insurer of the first respondent's car. He further submitted that admittedly, the First Information Report (Ex.P.1) and the Charge Sheet (Ex.R1) were filed against the claimant, but the Tribunal, without considering these aspects, fixed the liability against the respondents 1 and 2. The third respondent/Jayanth filed a separate claim petition claiming compensation against this appellant/Insurance Company and the owner of the car/first respondent therein, which is pending. Hence, he prays to set aside the award.

4.Per contra, the learned counsel appearing for the claimant submitted that the amount awarded under various heads are meagre and hence, the claimant seeks enhancement of compensation.

5.We have considered the rival submissions of the learned counsels and perused the materials available on record.

6.A perusal of the records indicates that the accident had taken place on 13.03.2011 at about 06.00 p.m near Puliyampattai bus stop in Thiruchengode - Vellore Road. According to the claimant, while he was riding his two wheeler bearing Reg.No.TN-34-L-1989 near Puliyampatti bus stop, the first respondent's Car bearing Reg.No.TN-45-AF-8686 and the third respondent's motorcycle bearing Reg.No.TN-33-AC-5230 (Yamaha Libra) came in a rash and negligent manner and hit against the claimant and caused injuries. Further, a perusal of the records indicates that the claimant did not implead the insurer of the third respondent's vehicle i.e., TN-33-AC-5230 (Yamaha Libra). On a perusal of the records, it further indicates that with regard to



the accident, a criminal was registered against the claimant in Tiruchengode Police Station in Crime No.108 of 2011. After investigation, Charge Sheet (Ex.R1) was also filed against the claimant. The Tribunal, without considering the First Information Report and the Charge Sheet filed against the claimant, based on the oral evidence of P.W.2, Ravikumar, fixed the negligence on the first respondent's car and held that the appellant/Insurance Company is liable to pay compensation.

7.We are of the considered view that the Tribunal failed to consider the First Information Report (Ex.P.1) and the Charge Sheet (Ex.R1) filed against the claimant and without assigning any reason, the Tribunal fixed the negligence upon the first respondent's Car. Besides, the third respondent filed the another claim petition and the same is also pending before the same Tribunal. Hence, in order to decide all the claim petitions with consistency, this matter has to be remanded to the Tribunal to avoid multiplicity of proceedings.

8.In the result, CMA No.4715 of 2019 is allowed and CMA No.3276 of 2019 is disposed of. The award dated 16.04.2019 made in MACTOP No.562 of 2011 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Sankari, is set aside and the matter is remitted back to the Tribunal for fresh consideration. The Tribunal is directed to consider the claim petition along with connected petitions viz., MCOP Nos.550 and 554 of 2011. Considering the fact that the claim petitions were filed in the year 2011, the Tribunal shall dispose of the Original Petitions as early as possible, preferably, within a period of three months from the date of receipt of a copy of this Judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

skn

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sankari.



2. The Section Officer,
V.R.Section, Madras High Court,
Chennai.

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.12942

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.13327

C.M.A.Nos.3276 and 4715 of 2019
and
C.M.P.No.26799 of 2019

SMI [co]
NSK/22/06/2022