IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. Nos. 3466 of 2012 and 249 of 2014
M.P. No.1 of 2014

(a). C.M.A. No.3466 of 2012

Munusamy ... Appellant / Petitioner

Vs.

1. V.R. Thukaram

2. United India Insurance Co. Ltd.,
No.236, New Military Road,
Avadi, Chennai - 600 054. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 19.06.2012 passed in M.C.O.P. No.733 of 2009 on the file of the Additional District and Sessions Judge, Motor Accident Claims Tribunal, III Additional District Court, Poonamallee.

For Appellant	:	Mr. J. Mahalingam
For R1	:	P/P
For R2	:	Mr. S. Arunkumar

(b). C.M.A. No.249 of 2014

United India Insurance Co. Ltd.,
No.236, New Military Road,
Avadi, Chennai - 600 054. ... Appellant / 2nd Respondent

Vs.

1. Munusamy ... Respondent / Petitioner

2. V.R. Thukaram ... Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 19.06.2012 passed in M.C.O.P. No.733 of 2009 on the file of the Additional District and Sessions Judge, Motor Accident Claims Tribunal, III Additional District Court, Poonamallee.

For Appellant	:	Mr. S. Arunkumar
For R1	:	Mr. J. Mahalingam
For R2	:	P/P

******

JUDGMENT

These Civil Miscellaneous appeals are filed by the claimant and the insurance company challenging the judgment and award passed in M.C.O.P. No.733 of 2009, dated 19.06.2012 on the file of the Additional District and

Sessions Judge, Motor Accident Claims Tribunal, III Additional District Court, Poonamallee, wherein the Tribunal has awarded a compensation for a sum of Rs.93,500/- along with interest @ 7.5 % per annum from the date of filing of petition till the date of realization to the claimant. The appeal in C.M.A. No. 3466 of 2012 has been filed by the claimant seeking for enhancement of compensation and the appeal in C.M.A. No. 249 of 2014 was filed by the insurance company challenging the liability fixed on the insurance company to indemnify the first respondent.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The case of the claimant is that on 02.12.2006 at about 7:00 PM, he was standing on the left hand side on the East Coast Road for crossing the road. At that time, a two-wheeler bearing Registration No. TN-22-Z-9972 came from south to north direction ridden by its driver in rash and negligent manner and hit on the claimant, which resulted in causing injuries to the claimant. Subsequently, the claimant was admitted in the hospital and after the treatment, had filed claim petition seeking a

compensation for a sum of Rs.4,00,000/- along with interest U/s. 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T. Rules. A criminal case was also registered in Cr.No.1026/2006 U/s.337 of I.P.C. on the file of J8, Neelangarai Police Station, against the rider of the two wheeler.

4. The first respondent is the owner of the two-wheeler bearing Registration No. TN-22-Z-9972, filed counter and contested the claim on the ground that his two wheeler was not involved in the accident and he has also denied the manner in which the accident taken place and prays to dismiss the claim petition.

5. The second respondent - insurance company has also filed a counter and denied the manner in which the accident has taken place and contended that the claimant has colluded with the police filed this false application only with a view to get compensation from this respondent - insurance company. The insurance company also disputed the age, income, occupation and nature of injuries sustained by the claimant during the accident and further contended that the compensation claimed is also on the higher side, hence prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.11 were marked, on the side of the respondent, R.W.1 and R.W.2 were examined and Exs. R1 to R5 were marked.

7. Based on the evidence placed on record, the Tribunal in point no.1, has held that the accident was taken place only due to the rash and negligence riding of the rider of the two-wheeler bearing Registration No. TN-22-Z-9972. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.93,500/- along with interest @ 7.5 % per annum from the date of filing of petition till the date of realization and also directed the second respondent - insurance company to indemnify the first respondent and to pay the compensation awarded to the claimant.

8. Aggrieved over the quantum of compensation, the claimant has filed an appeal seeking enhancement of compensation and the insurance company also filed a separate appeal against the liability fixed on them to indemnify the first respondent and to pay the compensation to the claimant

by the Tribunal.

9. The learned counsel appearing for the claimant has submitted that there is ample evidence placed on record to show that the two wheeler belongs to the first respondent was involved in the accident and no proper evidences were adduced on the side of the respondents to show that their vehicle was not involved in the accident, hence the Tribunal based on the evidence of P.W.1 and based on the Ex.P.1, the F.I.R lodged by one Sekar, who is the eye witness to the occurrence has accepted the case of the claimant. However, the Tribunal has not properly appreciated the nature of injuries sustained by the claimant, Ex.P.2 and P.3, discharge summaries, Ex.P.10, medical report and Ex.P.6, disability certificate and awarded a meagre compensation under various heads, hence prays to enhance the compensation awarded by the Tribunal.

10. The learned counsel appearing for the insurance company has submitted that, it is the rare case where the owner of the vehicle has come forward to contend the claim on the ground that his vehicle was not involved in the accident and it has been falsely implicated in the F.I.R. and

before the Tribunal, the insurance company has examined the owner of the vehicle and other witnesses to establish the case that the vehicle was not involved in the accident but the Tribunal has not properly appreciated the same and rejected the contention of the first respondent and the insurance company, hence prays to set aside the finding of the Tribunal and absolve them from paying the compensation.

11. Heard the submissions made on both sides and perused the materials available on record:

12. In this case, the claimant has been examined as P.W.1 and he has stated that on 02.12.2006 at about 7:00AM, he was standing on the left hand side on the East Coast road for crossing the road. At that time, a two-wheeler bearing Registration No. TN-22-Z-9972 came from south to north direction ridden by its driver in rash and negligent manner and hit on the claimant, which resulted in causing injuries to the claimant. He has also relied on the F.I.R., marked as Ex.P.1 to support his case.

13. On the side of the respondent, the owner of the alleged two

wheeler, who is the first respondent herein was examined as R.W.1 and according to him, he never permitted his vehicle to be ridden on the East Coast Road on the said date of occurrence and further stated that his vehicle was not involved in the accident, he came to know that a case has been registered against his vehicle only after receiving a notice from the police. The evidence of R.W.1 is that his vehicle has been falsely implicated in this case and in the cross examination of also, he has re-iterated the same.

14. The evidence of P.W.1. also shows that, while he was standing in the corner of the road for the purpose of crossing the road, a two wheeler ridden by its rider in rash and negligent manner dashed against him and ran away without stopping and he was immediately taken to the hospital, hence he has not seen the registration number or model of the vehicle. The eye witness to the occurrence namely Sekar, who preferred the complaint on the next day of the occurrence has noticed the registration number of the offending vehicle, which he has also mentioned in his complaint. However, the eyewitness has not been examined before the Tribunal and this clearly shows that the claimant was not aware about the offending vehicle. Only based on the complaint lodged by the eye witness the first respondent

vehicle was implicated in the accident.

15. The insurance company also examined R.W.2, Investigating Official of the insurance company and he has stated that he examined R.W.1 and filed a investigation report. This report contains only the hearsay matters as stated by R.W.1 and he was also not the eye witness to the occurrence. The insurance company also marked Ex.R.3, the letter sent by the R.W.1 to the Divisional Manager Insurance Company stating that his vehicle has been falsely implicated in the said accident.

16. Unlike the criminal case, the claimant has to prove the negligence act of the respondents/ rider of two wheeler to the extent of preponderance of probabilities. In this case, the claimant has not examined any witness, who has seen the occurrence and he also categorically stated that he was not aware about the two wheeler involved in the accident, since he was severely injured and he has came to know only through the eyewitness, who has given the vehicle number to the police station. Ex.P.1 – F.I.R contains the details about the manner in which the accident has taken place. The F.I.R was lodged by one Sekar, has noted the registration

number of the two wheeler immediately after the accident and it was also informed to the claimant. On the side of the respondent, except oral evidence of R.W.1, no corroborative evidence touching the occurrence placed on record. The Tribunal based on the F.I.R. which contains the registration number of the offending vehicle, and the police notice issued by the Inspector of Police to the first respondent regarding the involvement of his vehicle in the accident, even though, the respondents denied the involvement of his vehicle in the accident, held that the evidence of P.W.1 is more probable than the evidence of the respondent and concluded that the rash and negligence act of the rider of the two wheeler bearing Registration No. TN-22-Z-9972 is responsible for the accident and fixed the liability on the second respondent – insurance company. This Court finds no infirmity in the above finding of the Tribunal and confirms the same. Accordingly, the appeal filed by the respondent – insurance company has no merit and liable to be dismissed.

17. With regard to quantum of compensation is concerned, on perusal of the Ex.P.2 and P.3, discharge summaries, Ex.P.6 - the disability certificate and Ex.P.11- the discharge summary book, it shows that the

claimant has sustained dislocation of ankle with bimalleolur fracture, head injury, concussion brain and loss of teeth and the disability certificate issued by P.W.2 shows that the claimant has sustained partial permanent disability of 45%. Hence, the Tribunal considering the avocation of the claimant as driver and the nature of injuries sustained would cause difficulty in carrying out his avocation as driver, hence awarded compensation of Rs.70,000/- towards the partial permanent disability. This Court is of the view that based on the disability certificate and the nature of injuries sustained by the claimant, the disability caused is not a functional disability, hence considering the age and year of accident, the Tribunal has rightly awarded compensation under the head partial permanent disability and loss of earning power, hence this Court confirms the same.

18. Based on the medical records, it is clear that the claimant was hospitalized for about 70 days from 02.12.2006 to 27.01-2007, from 08.05.2007 to 28.05.2007 and from 13.09.2008 to 06.10.2008, hence the Tribunal has awarded compensation under the head loss of income during the treatment period for two months by fixing notional income of Rs.4,500/- per month, thereby granted Rs.9,000/- as loss of income during the

treatment period. The Tribunal has also awarded Rs.10,000/- towards pain and suffering and Rs.2,000/- each under the heads transportation expenses and extra nourishment and Rs.500/- under the head damage to articles. This Court finds no infirmity in the award of the Tribunal and the compensation awarded by the Tribunal is just and this Court hereby confirms the same. Accordingly, the appeal filed by the claimant seeking enhancement of compensation has no merit and liable to be dismissed.

19. In the result, both the Civil Miscellaneous Appeals filed by the claimant and the insurance company are dismissed. Consequently, connected miscellaneous petition stands closed. No costs.

15.09.2023

stn
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Additional District and Sessions Judge,
   Motor Accidents Claims Tribunal,
   III Additional District Court, Poonamallee.

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

K. RAJASEKAR, J.

stn

C.M.A. Nos. 3466 of 2012 and 249 of 2014

15.09.2023