IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

C.M.A. No.981 of 2018
and
Crl.M.P.No.7958 of 2018

Reliance General Insurance Co. Ltd.
Sri Lakshmi Complex (1st Floor),
Bharathi Street, Swarnapuri,
Salem ... Appellant

Vs.

1. Murugesan

2. Arun Kumar ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 16.12.2015 made in M.C.O.P.No.2123 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem.

For Appellant : Mr.S.Arun Kumar

For Respondents : R1- Notice served (No Appearance)
R2- Substituted Service
(Paper Publication) filed-No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against against the Award and decree dated 16.12.2015 made in M.C.O.P.No.2123 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem.

2. The case of the claimant/1st respondent is that on 08.09.2011 at about 10.15 p.m., while one Venkatesh was driving the motor-cycle bearing Regn. No.TN-30-AC-8089, the claimant had travelled as a pillion rider in the said vehicle. When they were proceeding near RPS Hospital on the Trichy Road, due to the rash and negligent driving of the rider of the motor-cycle, the claimant fell down and sustained injuries on his head and face. Subsequently, he was given first aid at Salem Dharan Hospital and thereafter, he took treatment as an in-patient at Salem Sri Gokulam Hospital.

3. The claimant had filed a claim petition in M.C.O.P.No.2123 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem, claiming compensation of Rs.5,00,000/- stating that at the time

of accident, he was aged 35 years and was earning Rs.10,000/- by doing Barber job and due to the accident, he could not run the Saloon and thereby, he suffered loss of income. The owner of the offending vehicle was arrayed as 1st respondent and the Insurer of the said vehicle was arrayed as 2nd respondent before the Tribunal.

4. In order to substantiate the case of the claimant before the Tribunal, on the side of claimant, two witnesses were examined as P.W.1 and P.W.2 and 6 documents were marked as Ex.P.1 to Ex.P.6. On the side of the 2nd respondent/Insurance Company, one witness was examined as R.W.1 and no documentary evidence was let in. Two documents were marked as X-1 and X-2 as 3rd party documents.

5. The Tribunal, on hearing the arguments of the learned counsel for the claimant and the learned counsel for the Insurance Company and considering the oral and documentary evidence, awarded compensation of Rs.4,33,000/- by fixing the liability on the 2nd respondent/Insurance Company who is the Insurer of the offending vehicle. Challenging the Award passed by the Tribunal, the 2nd respondent/Insurance Company has filed the present appeal before this Court.

6. The learned counsel for the appellant/Insurance Company submitted that no accident had taken place as mentioned in the claim petition and it was only a skid and fall and not an accident. Even in the FIR itself, it is stated as skid and fall and they had not met with any accident due to rash and negligent driving of the rider of the alleged offending motor-cycle and had not dashed against any other vehicle. Further, the FIR was also filed belatedly and the Doctor who gave the Disability Certificate is not the Doctor who gave treatment to the injured. Though the injured is the pillion rider, he has not established that the accident had occurred due to rash and negligent driving of the rider of the motor-cycle namely the 1st respondent. The Tribunal has failed to consider those aspects and shifted the burden on the appellant/Insurance Company to prove its case. The learned counsel submitted that it is settled proposition of law that the claimant has to prove his case and therefore, the claimant has to prove the initial burden that the accident had occurred due to the rash and negligent driving of the rider of the motor-cycle, whereas, the Tribunal without any materials, only based on sympathetical ground, passed the Award. Further, the Disability Certificate given by the Doctor after a period 5 years of the accident, does not reflect the actual Disability and that there is no permanent Disability. When there is no

permanent Disability, the compensation cannot be given under the head of "Disability". Therefore, the impugned Award passed by the Tribunal is exorbitant and it does not reflect the "just" compensation.

7. Though notice was served on the 1st respondent and his name is also printed in the cause list, there is no representation for the 1st respondent. In respect of the 2nd respondent, there was no representation inspite of substituted service effected through newspaper publication.

8. Heard the learned counsel for the appellant/Insurance Company and perused the materials available on record.

9. As per the contention of the learned counsel for the appellant/Insurance Company, the accident had not occurred due to the rash and negligent driving of the rider of the alleged motor-cycle, namely the owner of the vehicle and it was only a skid and fall and that there is no policy coverage under the head of "skid and fall" and therefore, the appellant/Insurance Company need not pay any compensation, unless the claimant establishes that he sustained injury only due to the rash and

negligent driving of the rider of the alleged vehicle. In the absence of the same, as the Insurer of the said vehicle, the appellant/Insurance Company may not be mulcted with the liability to pay any compensation to the claimant.

10. A perusal of the records shows that on 08.09.2011 at about 10.15 p.m., the claimant has travelled as a pillion rider in the vehicle bearing Regn.No.TN-30-AC-8089 and the owner of the vehicle has driven the said vehicle at the time of accident. The evidence of P.W.1/claimant clearly shows that the accident had happened due to the rash and negligent riding of the rider of the motor-cycle. Though the appellant/Insurance Company denied the same in the counter, they have not substantiated the same and there is no contra evidence for the same. The claimant, as a 3rd party, discharged the initial burden that at the time of accident, he had travelled as a pillion rider in the said motor-cycle which was alleged to have involved in the accident and that the accident had happened due to rash and negligent driving of the rider of the motor-cycle which was insured with the appellant/Insurance Company. Once the initial burden has been proved by the claimant, then the "onus" is shifted on the appellant/Insurance Company**.** But the appellant/Insurance Company had not discharged their onus that it was not a motor vehicle

accident and it was only a "skid and fall" and the accident had not occurred due to rash and negligent driving of the rider of the motor-cycle. Therefore, the claimant is entitled to compensation as a 3rd party to the Insurer. The Tribunal, as a fact finding authority, has rightly appreciated the evidence placed before it. Though the learned counsel for the appellant/Insurance Company stated that the FIR was closed by filing charge sheet that the case was closed, no action was taken against the rider of the vehicle.

11. It is a settled proposition of law that while deciding the claim petition, the Tribunal has to consider the materials available before it and the Tribunal has to find out the liability independently with the available materials. The claim petition cannot be disallowed on the ground that the criminal case was closed or the accused was acquitted of the charges. In this case, the Tribunal has appreciated the evidence placed before it independently and arrived at a conclusion that the accident was only a motor-cycle accident and it had occurred due to the rash and negligent riding of the rider of the alleged motor-cycle and due to that only, the claimant sustained injuries.

12. Admittedly, the vehicle was insured with the appellant and there was no violation of the policy conditions as pleaded by the appellant/Insurance Company as a defence. Under these circumstances, as an appellate Court and a final Court of fact finding, while re-appreciating the entire evidence independently, this Court also finds that the accident had happened due to the rash and negligent riding of the rider of the offending motor-cycle and that there is no contra evidence except the defence that it was not an accident and it was only a "skid and fall". Therefore, this Court finds that the appellant, as the insurer of the alleged motor-cycle, is liable to pay compensation to the claimant.

13. However, as far as quantum of compensation is concerned, though the injury sustained by the claimant was not disputed, the Doctor/P.W.2 who has issued the Disability Certificate, has given the Disability Certificate after 4 years from the date of accident. Further, the Doctor/P.W.2, who has issued the Disability Certificate did not give any treatment or he had never seen the claimant prior to giving the Disability Certificate. The accident took place on 08.09.2011, whereas, the Doctor/P.W.2 who gave the Disability Certificate has examined the injured only on 11.03.2015 and there is no medical record to show that after taking

treatment for the accidental injuries and after discharging from the hospital, the claimant was in continuous treatment and he had some complaints regarding pain or other suffering due to the accidental injuries even after filing the complaint and till he appears before the Doctor/P.W.2 who gave the Disability Certificate. The claim petition was filed in the year 2011. In the claim petition, the claimant had not stated anything that he was in continuous treatment and still he had not recovered from the injuries sustained due to the accident. Under those circumstances, after 4 years from the date of accident, the claimant has appeared before the Doctor/P.W.2 who gave the Disability Certificate and that the Doctor/P.W.2 has examined the claimant only for the purpose of giving Disability Certificate and not for anything else. Further, the Doctor/P.W.2 has not given the exact opinion as to whether the Disability is a Permanent Disability. He has only given his view based on the history of the accident stated by the claimant. Therefore, the Doctor/P.W.2 has only assessed the Disability based on the complaints of the claimant and not actually assessed the Disability in a scientific and medical manner.

14. Under these circumstances, this Court finds that the Disability fixed by the Doctor/P.W.2 is not appropriate and therefore, though

the Doctor/P.W.2 assessed the Disability as 38%, as already stated, he has neither given any treatment to the injured nor he has seen the injured either at the time of accident or at the time of taking treatment subsequently. Therefore, the reasons stated for assessing the Disability of the claimant after 4 years, is not acceptable.

15. Therefore, the Disability fixed by the Tribunal is reduced to 25% from of 38%. Accordingly, the amount towards Disability is calculated as Rs.75,000/- (25% x Rs.3000/-) by adopting Rs.3,000/- per percentage of Disability.

16. Further, the award of Rs.50,000/- granted by the Tribunal towards loss of Amenities and enjoyment of life is reduced to Rs.25,000/- .

17. Though it is stated that the claimant could not attend to his work due to the accidental injuries, no evidence was let in to show that the claimant did not go to work for 12 months and therefore, the compensation granted by the Tribunal towards loss of income for 12 months is reduced to 6 months. Accordingly, the compensation granted by the Tribunal towards loss

of income is reduced to Rs.36,000/- from Rs.72,000/- (Rs.6,000/-x6 months=Rs.36,000/-).

18. With regard to other heads, the amount awarded by the Tribunal appears to be reasonable and therefore, they need no interference by this Court. Accordingly, the Award passed by the Tribunal is re-worked as follows:-

S.No.	Description	Amount awarded by the Tribunal	Amount awarded by this Court (Rs)	Award Confirmed/ Enhanced/ Granted/Reduced
1.	For Disability	Rs.1,14,000 (Rs.3000x38%)	Rs.75,000/- (Rs.3000x25%)	**Reduced**
2	For Pain and Sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed
3	For Medical Expenses	Rs.1,15,700/-	Rs.1,15,700/-	Confirmed
4	For Extra Nourishment Expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
5	For Attender Charges	RS.20,000/-	Rs.20,000/-	Confirmed
6	For Loss of Amenities and Enjoyment of life	Rs.50,000/-	Rs.25,000/-	**Reduced**
7	For Damages to clothes	Rs.1,300/-	Rs.1,300/-	Confirmed
8	For Transport Expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
9	For Loss of income during treatment period	Rs.72,000/- (Rs.6,000/-x12)	Rs.36,000/- (Rs.6,000/-x6)	**Reduced**
	Total	Rs.4,33,000/-	**Rs.3,33,000/-**	Reduced

19. Accordingly, the award of the Tribunal is modified by reducing the compensation amount from Rs.4,33,000/- to **Rs.3,33,000/-.**

20. The appellant/Insurance Company is directed to deposit the modified award amount, to the credit of M.C.O.P.No.2123 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem, along with interest at the rate of 7.5% per annum, from the date of claim petition till the date of realisation and costs as awarded by the Tribunal, less the amount if any already deposited, with a period of six weeks from the date of receipt of copy of this order.

21. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including the interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, based on the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

22. The appellant/Insurance Company is permitted to withdraw the

excess amount, if any already deposited by them before the Tribunal.

23. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently connected Miscellaneous petition is closed. There shall be no order as to costs in the present appeal.

25.07.2023

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

To

1.The Motor Accident Claims Tribunal,
Special Sub Court No.1, Salem.

2.The Section Officer,
VR Section,
High Court,
Madras.

P.VELMURUGAN. J.

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C.M.A. No.981 of 2018 and
Crl.M.P.No.7858 of 2018

25.07.2023