



C.M.A.No.2880 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2880 of 2018
and C.M.P.No.21902 of 2018

United India Insurance Co Ltd
Oriental Theatre Complex
77, Arunachala Achari Street
Salem

... Appellant/2nd Respondent

Vs

1.Raja

... 1st Respondent/Petitioner

2.K.Arulmurugan

... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Decree and Judgment dated 09.07.2018 made in MCOP No.694 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

For Appellant

... M/s.C.Paranthaman

For Respondents

... R1-Died (Steps due)

... R2-No Appearance



C.M.A.No.2880 of 2018

JUDGMENT

WEB COPY

Aggrieved by the impugned award dated 09.07.2018 passed by the Motor Accident Claims Tribunal, Sub Court, Sankari made in MCOP No.694 of 2011, the Appellant/Insurance Company has filed the present appeal questioning the liability and quantum of compensation fixed by the Tribunal.

2. On 05.08.2011, at about 2.30 pm, when the claimant was riding a Two Wheeler bearing Reg.No.TN-28-Y-8125, near Ulagappampalayam Mechanic Shop, Unjanai Bus Stop on the extreme left side of Namakkal to Triuchengode Road, a Mahendra Van bearing Reg.No.TN-31-R-3807 belonging to the 2nd respondent, insured with the Appellant/Insurance Company, driven by its driver in a rash and negligent manner, dashed against the petitioner's vehicle thereby the claimant fell down and sustained grievous injuries, all over the body. Immediately after the accident, the claimant was admitted in the Government Hospital, Tiruchengode and he was given treatment. Thereafter, the claimant filed a claim petition before the Motor Accident Claims Tribunal, Sub Court, Sankari in MCOP No.694 of 2011 claiming compensation towards the injuries sustained by him.



C.M.A.No.2880 of 2018

WEB COPY

3. Before the Tribunal, the claimant examined himself as P.W.1 and the Doctor was examined as P.W.2 and marked Ex.P.1 to Ex.P.9. On the side of the respondents P.W.1, P.W.2 & P.W.3 were examined and Ex.R1 to Ex.R3. After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount a sum of Rs.5,00,000/- as compensation to the claimant and fastened the liability against the Appellant/Insurance Company. Challenging the same, the appellant/Insurance Company has filed the present appeal.

4. Learned counsel appearing for the Appellant/Insurance Company submitted that though the FIR was registered against the 2nd respondent/driver of the Mahendra Van, later, on investigation, having found that the petitioner's vehicle was driven in a rash and negligent manner resultantly, the petitioner dashed against the tamarind tree, the said FIR was referred to as mistake of fact. However, the Tribunal without properly adjudicating the issue, has fastened the negligence against the 2nd respondent which is wholly unsustainable. Further, the compensation awarded by the Tribunal is also



C.M.A.No.2880 of 2018

highly excessive which is liable to be interfered with. Accordingly, he prayed for allowing the appeal.

5. Though the Appeal has been filed in the year 2018, the Appellant/Insurance Company has not taken any steps to serve notice on the respondents. Considering the pendency of the Appeal, this Court is inclined to dispose of the same based on the materials available on record.

6. The factum of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. However, the Insurance Company had challenged the liability to pay on account of the negligence fixed on the 2nd respondent. After elaborately considering all the oral and documentary evidence, the Tribunal has passed an award based on the evidence of P.W.1. It is the claim of the appellant that the said accident had occurred purely due to the negligence on the part of the claimant who drove the vehicle in a rash and negligent manner and dashed against the tamarind tree. To substantiate its contentions, the insurance company placed reliance on the FIR, which was registered, which was later on referred to a mistake of fact.



C.M.A.No.2880 of 2018

WEB COPY

7. However, it is to be pointed out that it has been the consistent view of the Courts that FIR is may not and need not contain all the details. It is settled law that FIR is not a conclusive proof nor is an encyclopedia for deciding the case. Further FIR is not a substantive piece of evidence and it has to be substantiated by acceptable positive legal evidence. The FIR is only to set the criminal law in motion and no further. Merely because certain information is not mentioned or wrongly mentioned in the FIR cannot be a ground to doubt the statement of eye witnesses to the occurrence, when the said statements are found to be trustworthy. (*See Rohtash – Vs – State of Rajasthan (2006 (12) SCC 64 and Ranjit Singh & Ors. – Vs – State of Madhya Pradesh (JT 2010 (12) SC 167)*). The view expressed in the aforesaid decision has been reiterated by the Apex Court in *State of UP – Vs – Naresh & Ors. (2011 (4) SCC 324)*.

8. During the course of investigation, a rough sketch has been drawn, which is marked as Ex.P-5. This Court perused Ex.P5, the rough sketch which shows the tamarind tree being situated on the north side of the road, whereas



C.M.A.No.2880 of 2018

the accident had taken place on the right of the bus stop. However, in the final report, Ex.R1, it is stated that the claimant was driving the vehicle on the south side of the road without any indicator, but according to Ex.P-5 rough sketch, the tamarind tree, against which the claimant, is claimed to have dashed is on the north side of the road. This Court is at a loss to understand as to how a person driving a vehicle on the south side of the road could dash against a tamarind tree, which is on the north side of the road. The rough sktech, Ex.P-5, has not been questioned by the appellant/insurance company. That being the undisputed case, in the absence of any contra evidence adduced on behalf of the insurance company, the finding arrived at by the Tribunal fastening the liability on the 2nd respondent cannot be said to be erroneous.

9. On the question of compensation, this Court perused the impugned award passed by the Tribunal whereby the Tribunal, considering the age and income of the claimant, had fixed the notional income at Rs.8,000/- has awarded a sum of Rs.3,75,000/- ($\text{Rs.8000/-} \times 12 = \text{Rs. 96,000/-} \times 26\% \times 15$) under the head Loss of earning capacity by adopting multiplier method which



C.M.A.No.2880 of 2018

cannot be said to be excessive. Further, the Tribunal has fixed the disability at 26% on the basis of the deposition of the doctor P.W.2 which cannot be interfered with. By no stretch the compensation awarded in the appeal could be said to be excessive or disproportionate. Therefore, this Court is not inclined to interfere with the impugned award passed by the Tribunal.

10. Further, this Court finds that a sum of Rs.1,000/- towards Medical Expenses; Rs.75,000/- towards Pain and sufferings; Rs.5,000/- towards Transportation; Rs.10,000/- towards Attender charges; Rs.25,000/- towards simple injuries and Rs.4,000 towards loss of amenities are also just and reasonable which does not require any interference.

M.DHANDAPANI, J

NHS

11. Accordingly, the Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 09.07.2018 made in M.C.O.P.No.694 of 2011 is confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.



C.M.A.No.2880 of 2018

21.11.2023

WEB COPY

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS

To

1.The Motor Accident Claims Tribunal
Sub Court,
Sankari.

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

C.M.A.No.2880 of 2018
and C.M.P.No.21902 of 2018

21.11.2023