IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2024

CORAM:

THE HON'BLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2819 of 2014

The New India Assurance Company Ltd.
No.389 to 391, Crosscut Road
Gandhipuram
Coimbatore ... Appellant

vs.

1. K.G. Krishnan @ Krishnasamy

2. A. Arulprakash

3. S. Palanisamy ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and decree dated 28.11.2012 passed in M.C.O.P. No.951 of 2010 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Sathyamangalam.

For appellant	Mr. M. Krishnamoorthy
For R1	Mr. Ma.Pa.Thangavel
For R2	Notice dispensed with *vide* order dated 06.11.2024
For R3	No appearance

JUDGMENT

This civil miscellaneous appeal is focussed against the judgment and decree dated 28.11.2012 passed in M.C.O.P. No.951 of 2010 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Sathyamangalam (for short "the Tribunal").

2. For the sake of convenience and clarity, the parties will be referred to as per their rank in this civil miscellaneous appeal.

3. A brief summary of the germane facts leading to the filing of this civil miscellaneous appeal is as follows:

3.1. On 31.05.2010, about 7.30 p.m., while the first respondent/claimant, a tailor by avocation and aged about 50 years, was walking in Sathyamangalam–Kodiveri Road near Komarapalayam, Seeripallam, in the north – south direction, the second respondent, who was riding the two wheeler bearing Regn.No.TN 57 Z 4051 belonging to the third respondent, in a rash and negligent manner, dashed against the first respondent/claimant, owing to which, the first respondent/claimant sustained grievous injuries all over his body, especially in his left leg. Claiming that he was earning Rs.10,000/- per month, the first respondent/claimant filed a petition before the Tribunal seeking a compensation of Rs.5 lakhs from the second and third respondents, jointly and severally.

3.2. Before the Tribunal, the second respondent/driver was set *ex parte*. The third respondent/owner contested the case contending that the accident occurred only owing to the carelessness on the part of the first respondent/claimant; the first respondent/claimant is under an obligation to prove his age and income; the two wheeler in question did not belong to him (third respondent/owner) inasmuch as he had sold it to the second respondent/rider and hence, only the second respondent/rider is liable to compensate the first respondent/claimant.

3.3. The stand of the appellant Insurance Company before the Tribunal was that the insurance policy for the two wheeler was not subsisting on the date of the accident; the injuries sustained by the first respondent/claimant were only simple in nature and he had not suffered permanent disability at all.

3.4. Before the Tribunal, to prove their case, the first respondent/claimant examined two witnesses and marked twelve documents and on the other side, three witnesses were examined and five documents were marked.

3.5. The Tribunal, on appreciation of evidence, both oral and documentary and on hearing the parties, *vide* impugned judgment, held that the appellant/Insurance Company is liable to pay a sum of Rs.1,49,630/- as compensation to the first respondent/claimant. Aggrieved, the Insurance Company with which the two wheeler in question was insured, has preferred this civil miscellaneous appeal.

4. Having heard the learned counsel for the appellant/Insurance Company and the learned counsel for the first

respondent/claimant and also having perused the materials available on record, this Court now proceeds to appraise the judgment under challenge.

5. The points for consideration before the Tribunal were:

i. the accident occurred owing to whose carelessness; and

ii. whether the first respondent/claimant is entitled to be compensated and if yes, by whom.

6. As for point (i) *supra*, the Tribunal concluded that the accident occurred only due to the carelessness of the second respondent/rider. Such a conclusion was predicated on the filing of a charge sheet (Ex.P.6) against the second respondent/rider under Sections 279 and 338 IPC and also rough sketch (Ex.P.4), with which, this Court finds no mistake.

7. Next, as regards the first limb of point (ii), *supra*, *viz*., the

Tribunal, on the basis of Ex.P.2 (wound certificate), found that the first respondent/claimant took treatment as an inpatient in KGR Surgical Nursing Home for 10 days and he had sustained fracture in two bones in his left leg. However, though the doctor (P.W.2) had deposed that the first respondent/claimant had suffered 38% permanent disability in his left leg *vide* disability certificate (Ex.P.10), the Tribunal, by finding that the estimation of expenses (Ex.P.12) given by the doctor (P.W.2) did not corroborate with his deposition that plate and screws were fixed in the left leg, for removal of which by a surgery, it would cost Rs.20,000/-, came to the conclusion that the first respondent/claimant could have suffered only 20% permanent disability and that he would have suffered the pain therefore for about six months.

8. With regard to determination of monthly income of the first respondent/claimant, since no proof was filed, the Tribunal did not accept his claim that he was earning a sum of Rs.10,000/- per month as a tailor, and instead, fixed the notional income as Rs.4,500/- per month and awarded a sum of Rs.27,000/- towards loss of income (Rs.4,500/- x 6

months). Besides, the Tribunal awarded sums of Rs.45,000/- (Rs.7,500 x 6 months), Rs.18,000/- (Rs.3,000 x 6 months), Rs.9,000/- (Rs.1,500/- x 6 months), Rs.1,000/-, Rs.9,630/- and Rs.40,000/- towards pain and suffering, attendant's wages, extra nourishment, transport charges, medical expenses and permanent disability, respectively. Thus, in all, the Tribunal awarded a total compensation of Rs.1,49,630/- to the first respondent/claimant as against his claim of Rs.5,00,000/-.

9. In the considered opinion of this Court, while fixing the quantum of compensation, the Tribunal has analysed the amount of compensation to which the first respondent/claimant is entitled, in a threadbare manner, that is to say, though the doctor (P.W.2) had opined that the first respondent/claimant had suffered 38% permanent disability, the Tribunal did not accept the same and instead, fixed it at 20% since his deposition did not sync with estimation of expenses (Ex.P.12) issued by him. Likewise, since no proof was produced by the first respondent/claimant, the Tribunal fixed his notional income as Rs.4,500/-. This approach of the Tribunal in determining the first

respondent/claimant's permanent disability and notional income, by no stretch of imagination, can be found fault.

10. Coming to the second limb of point (ii), *supra*, *viz*., the liability aspect, though the third respondent took a stand before the Tribunal that he was not the owner of the two wheeler inasmuch as he had sold it to the second respondent/rider, the Tribunal disregarded the said stand on the ground that he did not inform the said sale to the Transport Office concerned within a fortnight from the date of the so-called sale, as mandated by Section 50 of the Motor Vehicles Act. Likewise, though the appellant Insurance Company took a categoric stand that the insurance policy of the two wheeler had expired well ahead of the date of the accident, it did not cut ice with the Tribunal. The Tribunal, upon scrutiny of report of the Motor Vehicles Inspector (Ex.P.3), finding that the rider of the two wheeler had a valid driving licence and that the two wheeler had insurance policy coverage till the expiry of the registration certificate and that the registration certificate was very much subsisting as on the date of the accident, concluded that

the appellant/ Insurance Company is liable to pay the compensation to the first respondent/claimant together with interest @ 7.5% per annum from the date of the petition till the date of payment.

11. Though the sheet anchor submission of the learned counsel for the appellant/Insurance Company before this Court is that the insurance policy of the two wheeler had expired in view of expiry of the registration certificate of the two wheeler, it is to be borne in mind that the Tribunal has placed reliance on the report of Motor Vehicles Inspector (Ex.P.3) who had stated in unequivocal terms in his report, as aforesaid, that the policy did exist till the validity of the registration certificate and that the registration certificate had not expired as on the date of the accident. If really the registration certificate had expired, there is no need whatsoever for the Motor Vehicles Inspector, who has no axe to grind, to state in his report (Ex.P.3) that the registration certificate had not expired. It is not the case of the appellant/Insurance Company either that the report of the Motor Vehicles Inspector (Ex.P.3) is a fabricated one. Such being the case, the main stance of the

appellant/Insurance Company that the insurance policy was not subsisting as on the date of the accident, deserves to be stated only to be rejected.

12. In view of the above discussion, this Court does not find any ground to interfere with the impugned judgment of the Tribunal.

13. As a sequel, this civil miscellaneous appeal fails and is accordingly dismissed, confirming the award passed by the tribunal in MCOP.No. 951 of 2010 dated 28.11.2012 and the appellant-insurance company is directed to deposit the compensation of Rs.1,49,630/- awarded by the tribunal to the credit of MCOP.No. 951 of 2010 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the Tribunal is directed to transfer the said amount to the first respondent / claimant directly to his bank account

through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in this appeal.

17.12.2024

RAP
Index : Yes/No
N.C. : Yes/No

To

1. The Motor Accidents Claims Tribunal (Subordinate Judge) at Sathyamangalam.

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

M. DHANDAPANI, J.

RAP

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