IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1766 of 2022
and
C.M.P.No.12789 of 2022

The Divisional Manager,
The New India Assurance Company Limited,
Nehru Street, Pondicherry. ... Appellant

Vs.

1.Shankar
S/o.Shanmugam

2.Manikandan
S/o.Nagamuthu ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.04.2019 made in M.C.O.P.No.518 of 2017 on the file of Motor Accident Claims Tribunal, (Additional Sub Court), Puducherry.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.K.Sasindran [R1]
No appearance [R2]

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JUDGMENT

This appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, (Additional Sub Court), Puducherry, in M.C.O.P.No.518 of 2017, dated 08.04.2019.

2. The case of the claimant is that he was travelling in an auto on 08.04.2012 and at about 14.30 hours, the auto was driven in a rash and negligent manner which capsized near Uthukattamman Koil, Keezhuputhupet, as a result, the claimant sustained multiple fractures in his left foot and abrasions and lacerations all over the body. Thereafter, the claimant was treated as an inpatient from 08.04.2012 to 04.05.2012. It is under these circumstances, the claimant filed the claim petition before the Tribunal seeking for compensation.

3. The second respondent, who is the appellant in this appeal, took a specific stand that the accident did not take place in the manner in which it was projected by the claimant. The insurance company took a stand that the claimant sustained injuries at the work place and in order to get compensation, a false complaint was given on 20.04.2012 as if the auto capsized and the claim petition itself came to be filed after nearly

1831 days on 28.04.2017 only. Therefore, the insurance company has questioned the negligence aspect itself in this case.

4. The Tribunal, on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving of the auto belonging to the second respondent. Having rendered such a finding, the Tribunal proceeded further to determine the compensation and the compensation payable was fixed at Rs.95,769/- in the following manner:

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Permanent disability	Nil
2.	Pain and Sufferings	35,000/-
3.	Loss of Income	30,000/-
4.	Medical Expenses	10,769/-
5.	Rich and Nutritious food	10,000/-
6.	Attender charges	5,000/-
7.	Transport expenses	5,000/-
	Total	**95,769/-**

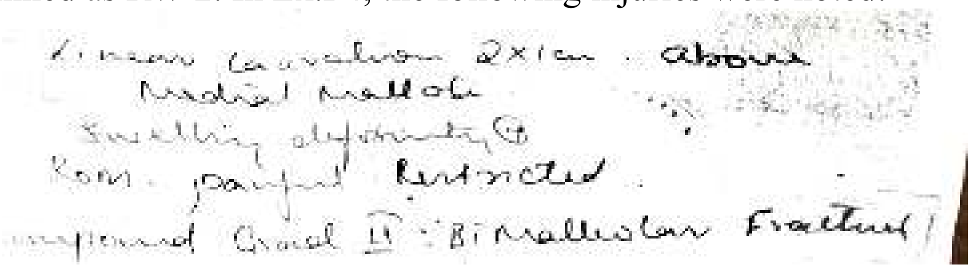
The above compensation was directed to be paid along with interest at 7.5% p.a.

5. Heard Mr.J.Michael Visuvasam, learned counsel for appellant insurance company and Mr.K.Sasindran, learned counsel for first respondent.

6. This Court carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. In the instant case, the accident is said to have taken place on 08.04.2012. The earliest document that is available to the accident is Ex.P4 - wound certificate, which was given by the doctor, who was examined as RW-2. In Ex.P4, the following injuries were noted:


1. Knee Laceration 2x1cm. Above
Medial Malleoli
Swelling, deformity (+)
ROM painful restricted.
Compound Grade II Bi Malleolar Fracture

9. It was further noted in the wound certificate that the injuries were sustained in the work place and the claimant is said to have banged his foot against a box containing fish while loading the box into a truck.

10. The First Information Report came to be registered only after nearly 12 days on 20.04.2012 at which point of time, the claimant came up with a new version as if he was travelling in an auto along with two others and this auto was driven in a rash and negligent manner and it capsized as a result of which the claimant sustained injuries.

11. Ex.P7, is the accident inspection report. It clearly states that there is absolutely no damage caused to the auto. That apart, the other two persons who travelled in the auto were not even examined in support of the claim made by the claimant. Topping all these, the claim petition itself came to be filed only in the year 2017 after 1831 days after the accident. The Tribunal, on considering the evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving of the auto belonging to the second respondent. Unfortunately, the Tribunal has not taken into consideration the wound certificate that was marked as ExP4. The Tribunal has also not taken into consideration the deposition of

PW-1 during cross-examination. PW-1 was specifically confronted with Ex.P4 and even though he admits the contents in that document, he stated that those contents are not correct. The doctor, who recorded this wound certificate, did not record based on his imagination. He had recorded only based on the statements given by the claimant. The doctor does not have an axe to grind against the claimant. Therefore, there is no need for the doctor to record a false statement in the wound certificate. The wound certificate specifically states that the injury had happened in the work place and it was sustained when the left foot of the claimant had hit a box containing fish while he was loading the box into a truck. The fact that the claimant had developed a case as if he sustained injuries after the auto capsized, is a subsequent improvement in the case and the complaint was given after 12 days of the accident.

12. In the considered view of this Court, the Tribunal has not properly appreciated the evidence of PW-1, RW-1, Ex.P4 - wound certificate and Ex.P7 - accident inspection report and the finding given with reference to the negligence aspect is unsustainable and the same is liable to be interfered with by this Court. Since the finding on the negligence aspect is interfered, there is no question of paying any

compensation to the claimant. This Court holds that a false claim has been made in this case by setting up an auto.

In the result, this Civil Miscellaneous Appeal is allowed and the award by the Motor Accident Claims Tribunal, (Additional Sub Court), Puducherry, in M.C.O.P.No.518 of 2017, dated 08.04.2019, is hereby set aside. If the appellant insurance company has deposited any amount, it will be left open to the appellant insurance company to withdraw the same with accrued interest. No costs. Consequently, connected miscellaneous petition is closed.

N.ANAND VENKATESH, J.

gm

12.04.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
gm

To

TheMotor Accident Claims Tribunal,
(Additional Sub Court),
Puducherry.

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