



C.M.A.(MD)No.252 of 2013

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.12.2023

PRONOUNCED ON : 08.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.252 of 2013

and

M.P.(MD)No.1 of 2013

The Branch Manager,
The New India Assurance Company Ltd.,
Coimbatore ... Appellant / 2nd Respondent

Vs.

1.G.Soundararaj ...1st Respondent / Petitioner

2.K.Muthukumar ...2nd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order 173 of Motor Vehicles Act, 1988, to set aside the award and decree dated 05.07.2012 made in M.C.O.P.No.23 of 2010 on the file of Motor Accidents Claims Tribunal Chief Judicial Magistrate, Kumbakonam at Thanjavur.



WEB COPY



C.M.A.(MD)No.252 of 2013

For Appellant : Mr.B.Vijay Karthikeyan
For R-1 : Mr.H.Lakshmi Sankar
For R-2 : Dismissed

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the award and decree dated 05.07.2012 made in M.C.O.P.No.23 of 2010 on the file of Motor Accidents Claims Tribunal Chief Judicial Magistrate, Kumbakonam at Thanjavur, by the appellant / Insurance Company challenging the liability as well as the quantum of the award passed by the Tribunal.

2. For the sake of convenience, the parties are referred herein as per their rank before the Trial Court.

3. The brief facts in a nutshell are as follows:

(i) This is a case of injury. The 1st respondent is the owner of the



C.M.A.(MD)No.252 of 2013

vehicle involved in the accident i.e., Hero Honda Passion motorcycle bearing registration No. TN 38 P 4538. The 2nd respondent is the Insurance Company in which the said vehicle was insured. On 18.11.2007, at about 7.45 P.M., while the petitioner was walking from west to east direction alone in Thondamuthur to Vadavalli road, near Kuriya Garden Vinayagar Koil, a Hero Honda Passion motorcycle bearing registration No. TN 38 P 4538 which came from the same direction hit the back side of the right leg of the petitioner. As a result of which, he fell down on the road. He also sustained fractures on his right leg. Immediately after the accident, the petitioner was admitted as inpatient in Rex Ortho Hospital, Coimbatore on 18.11.2007. A surgery was conducted on 19.11.2007 and 20.11.2007 on his right leg. He was discharged from the hospital on 26.11.2007. The petitioner sustained a compound fracture in both bones of the right leg. The petitioner is unable to sit, stand and walk as before the accident. He also spent Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) for medical expenses. Hence, the claimant has filed M.C.O.P.No.23 of 2010 before the Motor Accidents Claims Tribunal Chief Judicial Magistrate, Kumbakonam at Thanjavur for the injuries sustained by the petitioner in the above said accident.



C.M.A.(MD)No.252 of 2013

(ii) A complaint was lodged to Vadavalli police station and a case also been registered in Crime No.634 of 2007 under Section 279 & 337 of I.P.C.

(iii) Two issues were framed by the learned Tribunal. Following which three witnesses were examined and Ex.P-1 to Ex.P-8 were marked on the side of the petitioner. One witness was examined and Ex.R-1 to Ex.R-3 were marked on the side of the respondents.

(iii) The 2nd respondent had filed a counter refuting the allegations put forth in the claim petition. The 1st respondent was called absent and set exparte before the Tribunal. On the basis of the oral and documentary evidence and the arguments submitted by the respective parties before the Tribunal, the learned Tribunal had proceeded to conclude that the accident had occurred only due to the rash and negligence of the driver of the 1st respondent's vehicle. Since the vehicle has been insured with the 2nd respondent Insurance Company, the 2nd respondent is entitled to indemnify the 1st respondent.



C.M.A.(MD)No.252 of 2013

WEB COPY

(iv) One doctor Seenivasan was examined as P.W-3 and the partial permanent disability certificate issued by him which was marked as Ex.P-7. P.W-3 had issued partial permanent disability certificate at 31.1% to the petitioner. However, the learned Tribunal fixed the partial permanent disability at 29%, considering the fact that, in the due course of the time during the course of treatment, the said disability to the right leg of the injured could be recovered. On the basis of the partial permanent disability certificate, Ex.P-7, the learned Tribunal fixed the age of the claimant as 34 and has taken Rs.1,500/- (Rupees One Thousand and Five Hundred only) per percentage for partial permanent disability. Hence, the Tribunal has proceeded to conclude that the petitioner was entitled to get an amount of Rs.1,16,841/- (Rupees One Lakh Sixteen Thousand Eight Hundred and Forty One only) as compensation for the injuries sustained in the accident. The details of the compensation awarded by the learned Tribunal are as follows:



C.M.A.(MD)/No.252 of 2013

S.No.	Description	Amount
1.	Partial Permanent Disability	Rs. 43,500/-(29*1500)
2.	Pain and sufferings	Rs. 10,000/-
3.	Nutrition and nourishment	Rs. 2,000/-
4.	Transport Expenses	Rs. 2,000/-
5.	Medical Bills	Rs. 59,341/-
	Total	Rs.1,16,841/-

Aggrieved by that award, the appellant Insurance Company / 2nd respondent has filed the present appeal.

4. The learned counsel for the appellant/ Insurance Company has submitted that the Tribunal is wrong in fixing the liability and negligence. The learned Tribunal failed to note that the FIR has been lodged after a period of 5 days from the accident and also the police authorities after investigation has closed the FIR as “Mistake of Fact”. The learned Counsel appearing for the appellant / Insurance Company further contended that P.W-2 is a created witness to suit the claim petition and the evidence given by P.W.2 is liable to be rejected. Therefore, the Insurance Company is not liable to pay any compensation to the claimant. It is further contended that the compensation awarded by the Tribunal is excessive, exorbitant and without any basis and justification. Hence the order passed by the Tribunal



C.M.A.(MD)/No.252 of 2013

is not in accordance with law and the same should be set aside and pressed for allowing this appeal.

5. Per contra, the learned counsel for the claimant has submitted that the Tribunal had considered all the materials and evidence available on record and awarded the compensation which is just, fair and reasonable. He further submitted that the claimant / injured / Soundararaj who was examined as P.W-1 had clearly deposed that it was only the 1st respondent while riding his Hero Honda Passion motorcycle bearing registration No. TN 38 P 4538 in a rash and negligent manner dashed his back side causing fracture in his right leg. That apart, the motor vehicle report dated 27.11.2007 which was marked as Ex.P-2 also reveals the details of the vehicle and the owner of the vehicle involved in the accident. Though R.W-1, the officer of the 2nd respondent Insurance Company had deposed his evidence that the accident had never happened in the manner as described by P.W-1 and marked the enquiry report as Ex.R-1, the investigation officer was not examined as a witness before the learned Tribunal. Hence the order passed by the Tribunal is in accordance with law and the same has to be confirmed.



C.M.A.(MD)No.252 of 2013

WEB COPY

6. Heard the learned counsel for the appellant and perused the materials available on record. On the side of the claimants, three witnesses were examined and Ex.P-1 to Ex.P-8 were marked. On the side of the respondents, one witness was examined and Ex.R-1 to Ex.R-3 were marked.

7. I carefully peruse the materials available on record. On the basis of the oral and documentary evidence and the rival submissions of both the Counsels, it is clear that the accident had happened only because of the rash and negligence of the driver of the 1st respondent's vehicle. Though the Crime No. 634 of 2007 has been referred as a mistake of fact, a critical perusal of the same would reveal that the same complaint has been closed based on the report of the hospital in which the injured was admitted wherein it was recorded that the injuries were sustained as he fell down from the vehicle. But, the learned Tribunal has proceeded to pass an award in favour of the claimant on the evidence / admission made by P.W-1 one Kannan in his evidence who claim to have driven the vehicle involved on the date of the accident that he had caused the accident. A clear perusal of



C.M.A.(MD)No.252 of 2013

the FIR marked as Ex.P-1 would reveal that the FIR has been registered only as against the rider of the Hero Honda Passion motorcycle bearing registration No. TN 38 P 4538. That apart, neither the 1st respondent nor the 2nd respondent had examined any other witnesses other than the officer of the 2nd respondent Insurance Company to disprove the contention of P.W-1 and P.W-2. Hence, I find that the Tribunal has rightly assessed the oral and documentary evidence and arrived at a just and reasonable compensation. In view of the same, this Court is of the considered view that it is not necessary to interfere with the award passed by the Tribunal. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed.

8. The appellant is directed to deposit the compensation amount as awarded by the Tribunal with accrued interest and costs to the credit of M.C.O.P.No.23 of 2010 before the Motor Accidents Claims Tribunal Chief Judicial Magistrate, Kumbakonam at Thanjavur, within a period of eight weeks (8) from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the claimant is permitted to withdraw the said amount, less the amount, if any already



C.M.A.(MD)No.252 of 2013

withdrawn, by making necessary application before the Tribunal. No costs.

WEB COPY

08.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml



C.M.A.(MD)No.252 of 2013

To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Kumbakonam at Thanjavur.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.252 of 2013

L.VICTORIA GOWRI, J.,

Sml

C.M.A.(MD)No.252 of 2013

08.01.2024