

The Divisional Manager, Vs. 1.Murugan

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Court : Chennai

Decided On : May-15-2013

Judge : C.S.Karnan

Appellant : The Divisional Manager,

Respondent : 1.Murugan

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

15. 05/2013 CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN C.M.A(MD) No.827 of 2012 The Divisional Manager, National Insurance Company Limited, Opposite to District Court, Sub-Collector Office Road, Dindigul. .. Appellant vs 1.Murugan 2.Krishnan 3.Savithri .. Respondents Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and Decree dated 21.06.2011, passed in M.C.O.P.No.4 of 2007, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Dindigul. !For Appellant .. Mr.J.S.Murali ^For Respondent .. Mr.A.Saravanan for R1 No Appearance for R2 and R3 :

JUDGMENT

The appellant/3rd respondent has preferred the present appeal in C.M.A.(MD)No.827 of 2012, against the judgment and decree passed in M.C.O.P.No.4 of 2007, on the file of the Motor Accident Claims Tribunal, Chief

Judicial Magistrate Court, Dindigul.

2. The Short facts of the case are as follows: The petitioner has filed the claim in M.C.O.P.No.4 of 2007, claiming compensation of a sum of Rs.5,00,000/- from the respondents for the injuries sustained by him in a Motor Vehicle Accident. It was submitted that on 22.08.2006, at about 11.00 a.m., when the petitioner was riding his bicycle on the Neikarapatti to Palani Main Road, west to east and when the bicycle was nearing RR Mills, the 2nd respondent's ".Hero Honda". Motorcycle bearing registration No.TN-57V-9287 coming in the opposite direction and driven by its driver at a high speed and in a rash and negligent manner dashed against the petitioner and caused the accident. As a result, the petitioner sustained severe injuries. Due to the injuries sustained in the accident, he is unable to do his normal work as before. Hence, the petitioner has filed the claim against the 1st, 2nd and 3rd respondents, who are the driver, owner and insurer of the motorcycle bearing registration No.TN-57V-9287.

3. The 3rd respondent, in his counter has submitted that the motorcycle which is said to have been involved in the accident is stated in the F.I.R, charge sheet and other police records as bearing registration No.TN-57V-9287 and the respondent had not issued any policy for the said motorcycle. The averments in the claim regarding age, income, injury, period of treatment, expenses and disability was also not admitted. It was submitted that the claim is excessive and out of all proportions. It was submitted that the 1st respondent, who had driven the motorcycle bearing registration No.TN-57V-9387, did not have a valid driving licence to drive any two wheelers on the date of accident and as such the respondent is not liable to pay any compensation to the petitioner.

4. The Motor Accident Claims Tribunal framed four issues for consideration in the case namely: (1)Due to whose negligence was the accident caused?.; (2)Who is liable to pay the compensation to the petitioner?.; (3)What is the quantum of compensation payable to the petitioner?.; (4)To what other relief is the petitioner entitled to get?.. On the side of the petitioner, PW.1 to PW.5 were examined and ten documents were marked as Exs.P1 to P10 namely: Ex.P1-F.I.R; Ex.P2-wound certificate; Ex.P3-Charge sheet; Ex.P4-Motor Vehicle Inspector Report; Ex.P5-

order copy in C.C.534 of 2006; Ex.P6-Hospital note book; Ex.P7- letter from Motor Vehicle Inspector Palani with form A.I.R; Ex.P8-requisition letter; Ex.P9-disability certificate; Ex.P10-X ray film for Ex.P4; On the respondent's side, two witnesses were examined and five documents were as Exs.R1 to R5 namely: Ex.R1-Policy; Ex.R2-notice to 2nd respondent; Ex.R3-Notice to 1st respondent; Exs.R4 and R5.

5. PW.1, the petitioner had deposed evidence which is corroborative of the statements made in the claim regarding manner of accident and in support of his evidence he had marked Exs.P1 to P10. On scrutiny of Ex.P4, it is seen that the vehicle involved in the accident was bearing registration No.TN-57V-9287 and that the Police had mistakenly entered the registration No.TN-57V-9287, on scrutiny of Ex.P1, it is seen that on the basis of complaint given by one Mahudeeswaran, the case has been registered against the rider of the above said two wheeler. On scrutiny of Exs.P3 and P5, it is seen that he was charge sheeted and he admitted the offence and paid the fine amount. Hence, the Tribunal on scrutiny of oral and documentary evidence held that the accident had been caused by the rash and negligent driving by the 1st respondent.

6. The Tribunal on considering that the 1st respondent did not have a valid licence at the time of accident, but on observing that the 2nd respondent's vehicle had been insured with the 3rd respondent at the time of accident, held the 3rd respondent liable to pay the compensation and recover it from the 2nd respondent.

7. PW.5, Dr.Vijayakumar had adduced evidence that the fractured bone in his leg has mal-united and that due to injuries sustained in his face, his face had been disfigured. He deposed that due to fracture in his leg, his movements of both knees have been registered to 50%. He deposed that the petitioner had sustained 49% disability and in support of his evidence, he had marked the disability certificate as Ex.P9 and X rays as Ex.P10.

8. On scrutiny of Exs.P2 to P6, it is seen that the petitioner had received treatment as an inpatient for 51 days at Rajaji Government Hospital, Madurai, from 22.08.2006 to 11.10.2006. Hence, the Tribunal, on scrutiny of the oral and documentary evidence awarded a sum of Rs.60,000/- towards pain and suffering; Rs.15,000/- was awarded for nutrition; Rs.5,000/- was awarded for medical

expenses and transportation. The Tribunal on holding the notional income of the petitioner was Rs.3,000/- and on observing that he had taken treatment at Hospital for 51 days awarded a sum of Rs.15,000/- as compensation under the head of loss of income during medical treatment and convalescence period. The Tribunal, on holding that the disability of petitioner was 30% awarded a sum of Rs.1,72,800/- ($\text{Rs.3,000/-} \times 12 \times 30 / 100 \times 16$). In total, the Tribunal granted a sum of Rs.2,67,800/- as compensation to the petitioner and directed the 3rd respondent to deposit the said sum together with interest at the rate of 7.5% per annum from the date of filing the petition till date of payment of compensation, with costs, within 30 days and permitted the 3rd respondent to recover the same from the 1st and 2nd respondents through this same decree.

9. Aggrieved by the award passed by the Tribunal, the 3rd respondent/National Insurance Company Limited, Dindigul, has preferred the present appeal. The learned counsel for the appellant has contended in his appeal that the Tribunal erred in not holding that the appellant insurance Company is not at all liable to pay any compensation. When the rider of the appellant insured vehicle, who has caused the accident did not possess driving licence to ride the vehicle at the time of accident on 22.08.2006. It was contended that the Tribunal, even after holding that there is wilful breach of policy terms and conditions has grossly erred in adopting pay and recovery method which cannot be legally sustainable as per the settled law of the land. It was contended that the Tribunal erred in not considering the evidence of Rws.1 and 2 and Exs.R1 to R5 in the proper perspective. It was contended that the Tribunal had erred in adopting multiplier method for arriving at compensation towards future loss of income and the same cannot be legally sustainable. It was contended that the Tribunal erred in not considering that the claimant did not suffer with any compensation or any permanent disablement, which would incapacitate him to carry on his avocation for the rest of his life. It was contended that the award granted under the head of disability, pain and suffering, nourishment and loss of earning are on the higher side and hence it was prayed to set aside the award passed by the Tribunal.

10. The learned counsel for the claimant contended that the claimant had sustained multiple bone fracture injuries and he has been hospitalized for a period

of 51 days as an inpatient. After the accident, he is unable to do his avocation as a Tailor, since both his legs had been fractured. On considering this aspect the Tribunal had granted compensation of a sum of Rs.1,72,000/- under the head of loss of future earning.

11. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence and liability. However, the Tribunal awarded a sum of Rs.1,72,800/- under the head of loss of future earning, which has been awarded after adopting multiplier method is not pertinent in the instant case. Therefore, this Court restructures the compensation as follows: Rs.60,000/- towards disability; Rs.15,000/- towards pain and suffering; Rs.10,000/- towards attender charges; Rs.10,000/- towards transport; Rs.10,000/- towards nutrition; Rs.15,000/- towards loss of earning during medical treatment and convalescence period; Rs.10,000/- towards medical expenses and Rs.50,000/- towards loss of amenities and loss of comfort, since both his legs had been fractured and as this is permanent in nature. In total this Court awards Rs.1,80,000/- as compensation. The rate of interest and pay and recovery fixed by the Tribunal remains unaltered.

12. As per this Court records, it is seen that this Court imposed a condition on 18.07.2012, on the appellant to deposit 50% of the award amount and permitted the claimant to withdraw 50% of the deposited amount. Now, this Court directs the appellant to deposit the balance compensation amount, as per this Court's findings, within a period of four weeks from the date of receipt of this order. After such deposit having been made, it is open to the claimant to withdraw the entire compensation amount, as per this Court findings, lying in the credit of M.C.O.P.No.4 of 2007, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Dindigul, subject to deduction of withdrawals made, if any as per this Court's earlier order.

13. In the result, the above appeal is partly allowed. Consequently, the award and decree passed in M.C.O.P.No.4 of 2007, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Dindigul, dated 21.06.2011, is modified.

No costs. ub To The Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Dindigul.

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