

The Branch Manager, Vs. 1.David

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Court : Chennai

Decided On : Jan-02-2013

Judge : C.S.Karnan

Appellant : The Branch Manager,

Respondent : 1.David

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:02/01/2013 CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN C.M.A(MD) No.1037 of 2004 and C.M.P.Nos.6089 and 6090 of 2004 The Branch Manager, United India Insurance Company Limited, Kottachery, Kerala. .. Appellant vs 1.David 2.Mohammed .. Respondents Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the fair and decreetal order of the Motor Accident Claims Tribunal, Additional District Judge, Dindigul, in M.A.C.T.O.P.No.417 of 2000, dated 05.02.2002. !For Appellant ... MR.G.Prabhu Rajadurai ^For Respondent ... Mr.S.M.Mohan Gandhi for R1 No Appearance for R2 :JUDGMENT The appellant/2nd respondent has preferred the appeal in C.M.A.No.1037 of 2004, against the judgment and decree made in M.C.O.P.No.417 of 2000, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dindigul.

2. The petitioner has filed the claim in M.C.O.P.No.417 of 2000, claiming compensation of a sum of Rs.1,00,000/- from the respondents, for the injuries sustained by him in a motor vehicle accident. It was submitted that on 26.04.1996

at about 11.30 a.m., when the petitioner was riding his moped on the Dindigul railway station road, from east towards north and when he was nearing Nagal near water tank, the 1st respondents Jeep bearing registration not KL-11- 2293, coming on the same road and driven by its driver at a high speed and in a rash and negligent manner dashed against the petitioner and caused the accident. The petitioner fell down and sustained injuries. He was admitted at the Dindigul Yoga Hospital. Hence, the injured petitioner, has filed the claim against the 1st and 2nd respondents, who are the owner and insurer of the Jeep bearing registration not KL-11-2293.

3. The 2nd respondent in his counter has submitted that the averments made in the claim regarding age, income and occupation of petitioner, nature of injuries sustained, medical treatment taken, medical expenses have to be proved through documentary evidence. It was submitted that the claim was excessive. It was submitted that 1st respondents Jeep driver had driven Jeep in a careful and cautious manner and sounded horn and that the petitioner had suddenly crossed the road and collided against the jeep. It was submitted that as the accident had been caused by the negligence of the petitioner, the 2nd respondent cannot be held liable to pay any compensation. It was submitted that the petitioner should prove that the jeep was covered under a valid policy of insurance with them and that the driver of the jeep had a valid driving licence to drive the jeep at the time of accident.

4. The Motor Accident Claims Tribunal had framed three issues for consideration in the case namely: (1) Due to whose negligence was the accident caused?; (2) What is the quantum of compensation which the petitioner is entitled to get? (3) To what other relief is the petitioner entitled to get?.

5. On the petitioners side, two witnesses were examined and four documents were marked as Exs.P1 to P4 namely: Ex.P1-F.I.R; Ex.P2-wound certificate dated 30.04.1996; Ex.P3-disability certificate dated 04.12.2001 and Ex.P4- x ray. On the respondents side, no witness, no documents.

6. PW.1, the petitioner had adduced evidence that on the date of accident, at about 11.30 a.m., when he was proceeding in his moped bearing registration not

TTZ-7456, on the left side of the road on the Dindigul railway station road and nearing Nagal Nagar Bus stop, the 1st respondents jeep, coming from behind him, on the same road, bearing registration not KL11-2293, driven by its driver at a high speed and in a rash and negligent manner had dashed behind his moped. He deposed that he was thrown out of his vehicle. In support of his evidence, he had marked the exhibits listed as P1 to P4.

7. It is seen from the scrutiny of the F.I.R, that injured petitioner had been taken in the jeep of the 1st respondent and admitted at a private hospital and that the jeep driver had then left. The Tribunal observed that no witnesses had been examined on the side of the respondents to show the mode of occurrence of accident. Hence, the Tribunal on scrutiny of evidence of PW.1 and on perusal of F.I.R marked as Ex.P1 held that the accident had been caused by the rash and negligent driving by the driver of the 1st respondents jeep. The Tribunal on observing that the 1st respondents jeep had been insured with the 2nd respondent liable to pay compensation to the petitioner.

8. PW.1, had adduced evidence that in the accident, he sustained fracture of his bone below his right knee joint and injuries on his left forearm and right shoulder and that he had taken treatment at Kalyani Hospital for a period of four days, as an inpatient and that subsequently he had taken treatment at Dindigul Government Hospital for one week, as an inpatient. He deposed that after the accident, he is not able to stand and sit and is not able to walk a long distances. On scrutiny of Ex.P2-wound certificate, it is seen that the injury in the petitioners right foreleg had been termed as a grievous injury and that he had received treatment as an inpatient from 30.04.1996 to 04.05.1996.

9. PW.2, Dr.Jaganathan, had adduced evidence that he had examined the petitioner on 04.12.2001 and also scrutinized the medical records. He deposed that the petitioner had taken treatment at Dindigul Government Hospital, from 30.04.1996 to 04.05.1996 as an inpatient and the Tibial Antale Bone in the petitioner's right fore leg had been fractured and that it had malunited and hence the movements of the petitioners right foreleg has been restricted to 30". He deposed that the petitioner had sustained 35% disability and in support of his

evidence, he had marked Ex.P3 disability certificate and Ex.P4-x rays.

10. Hence, the Tribunal on considering the oral and documentary evidence, awarded a sum of Rs.25,000/- under the head of pain and suffering and nutrition; Rs.35,000/- under the head of disability, loss of earning capacity and loss of income. In total, the Tribunal awarded a sum of Rs.60,000/- as compensation to the petitioner and directed the 2nd respondent to deposit the compensation of Rs.60,000/- along with interest at the rate of 9% per annum from the date of filing the petition till date of deposit, together with costs, within one month from the date of its order.

11. Aggrieved by the award passed by the Tribunal, the 2nd respondent/United India Insurance Company Limited, has preferred the present appeal. The learned counsel for the appellant has contended in his appeal that the Tribunal failed to see that the claimant has referred in the claim petition the criminal proceedings in column 9, where the Dindigul north Police Station in crime No.292 of 1996 under section 279, 337 of IPC have obtained a record pertaining to the insurance coverage which is incidentally did not reflect the correct state of affairs in respect of the insurance coverage. It was contended that the tribunal erred in fastening the liability on the appellant/insurance company on a total misconception and misevaluation of the interpretation of the risk on a wrong assessment of the coverage. It was contended that the three additional documents proposed to be filed i.e., (1) the communication received by the Divisional Office, Kannanur of the Divisional Office at Dindigul dated 03.05.2002; (2) Xerox copy of certificate of insurance produced by the insured to the Dindigul north Police station in Crime No.292 of 1996 under section 279, 337 of I.P.C and (3) the original certificate of insurance, exonerated the appellant/insurance company from payment of the compensation in respect of the award in question, Hence, it was prayed to set aside the award passed by the Tribunal.

12. The learned counsel for the claimant argued that the claim case was filed in the year of 2000. The insurance company has filed the counter statement in the year of 2000. After four years, the company had tried to produce additional documents before this Court in the appeal and that two xerox copies. The

insurance company cannot mark the documents before this Court, since the Court is an Appellate authority. If the said documents are marked before this Court, cross examination is absolutely necessary and that cannot be done before the appellate Court. The learned counsel further argued that the case has already been referred to the CBI, but no findings have been given so far. In order to evade payment of compensation, the insurance company has taken this unnecessary step without any valid grounds. It was an admitted fact and it has also been established that the accident had happened after marking F.I.R, wound certificate etc. The doctor has assessed the disability at 35%. The Tribunal had not granted adequate compensation to the claimant. The learned counsel further submits that the entire compensation amount had been deposited already.

13. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the said order regarding liability and quantum of compensation assessed by the Tribunal.

14. It is open to the claimant to withdraw the entire compensation amount with accrued interest thereon, lying in the credit of Motor Accident Claims Tribunal, Additional District Judge, Dindigul, after filing a memo along with a copy of this order, subject to deduction of withdrawals, if any.

15. In the result, this Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed in M.A.C.T.O.P.No.417 of 2000, on the file of Motor Accident Claims Tribunal, Additional District Judge, Dindigul, dated 05.02.2002, is confirmed. Consequently, connected miscellaneous petitions are closed. No costs.

ub To 1.The Motor Accident Claims Tribunal, Additional District Judge, Dindigul.
2.The Section Officer, VR Section, High Court, Madras.

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