

The Branch Manager, Vs. 1.Johnrose

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Court : Chennai

Decided On : Mar-19-2013

Judge : C.S.Karnan

Appellant : The Branch Manager,

Respondent : 1.Johnrose

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

19. 03/2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN C.M.A.(MD)No.650 of 2012 & M.P.(MD)No.1 of 2012 The Branch Manager, New India Insurance Company Limited, Opp. to Anna Stadium Nagercoil, Kanyakumari District. ... Appellant Vs. 1.Johnrose 2.Rathinadoss 3.Darlin Charles ... Respondents PRAYER Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set-aside the award and decree dated 21.09.2011 made in M.C.O.P.No.84 of 2008, on the file of Motor Accidents Claims Tribunal, Principal Subordinate Judge, Padmanabapuram. !For Appellant ... Mr.B.Vijay Karthikeyan ^For Respondents... Mr.C.K.M.Appaji for R-1 No appearance for R-2 and R-2 - - - :JUDGMENT The appellant / third respondent has preferred the present appeal against the judgment and decree passed in M.C.O.P.No.84 of 2008, on the file of Motor Accidents Claims Tribunal, Principal Subordinate Judge, Padmanabapuram.

2. The short facts of the case are as follows:- The petitioner has filed the claim in M.C.O.P.No.84 of 2008, claiming compensation of a sum of Rs.2,00,000/- from the

respondents for the injuries sustained by him in a motor vehicle accident. It was submitted that on 31.07.1999, at about 05.00 p.m., when the petitioner was travelling in the second respondent's lorry bearing registration not TN-74-A-7623, which was carrying a load of wooden logs, driver of the lorry drove the lorry in a rash and negligent manner, due to which, the accident occurred. As a result, the petitioner sustained injuries and was admitted at a hospital, wherein he received treatment. It was submitted that a criminal case had been filed against the first respondent for his rash and negligent driving. Hence, the petitioner has filed the claim against the first, second and third respondents, who are the driver, owner and insurer of the lorry bearing registration No. TN-74-A-7623 .

3. The third respondent, in his counter has submitted that the accident had not occurred due to any negligence on the part of the first respondent, as alleged in the claim. It was submitted that as the first respondent's lorry was a goods vehicle and as the petitioner had travelled as a gratuitous passenger in the said lorry, the third respondent cannot be held liable to pay any compensation. It was submitted that no insurance policy had been taken with them to extend coverage for the risk of the petitioner. It was submitted that the claim was excessive.

4. The Motor Accidents Claims Tribunal had framed three issues for consideration in the case, viz., "(i) Was the accident caused due to the negligence of the first respondent? (ii) Is the third respondent liable to pay compensation to the petitioner? (iii) What is the quantum of compensation which the petitioner is entitled to get?" 5. On the petitioner's side, two witnesses were examined and nine documents were marked as Exs.P1 to P9, viz., Ex.P1-copy of F.I.R. dated 31.07.1999, Ex.P2-copy of observation mahzar dated 01.08.1999, Ex.P3-copy of rough sketch, Ex.P4-copy of motor vehicle inspector's report dated 03.08.1999, Ex.P5-copy of wound certificate dated 31.07.1999, Ex.P6-copy of final report dated 31.07.1999, Ex.P7-disability certificate dated 04.12.2009, Ex.P8-trip sheet, Ex.P9-copy of family ration card. On the respondent's side, two witnesses were examined and four documents were marked as Exs.R1 to R4, viz., Ex.R1-copy of policy, Ex.R2-authorization letter dated 27.07.2011 given to R.W.2 to adduce evidence, Ex.R3-R.C. details of second respondent, Ex.R4-letter dated 26.08.2011 showing that the permit for plying vehicle was not in force on 31.07.1999.

6. P.W.1, the petitioner had adduced evidence that at the time of accident, six persons had travelled in the first respondent's lorry which was carrying a load of wooden logs and that the accident was caused only due to the rash and negligent driving of the lorry by the first respondent. The Tribunal observed that the first respondent had not entered appearance to rebut the claim of P.W.1. It is also seen that the F.I.R. had been registered against the first respondent. Hence, the Tribunal, on scrutiny of the oral and documentary evidence held that the accident had been caused by the rash and negligent driving of the first respondent.

7. R.W.2, Madasami, the Junior Assistant in the R.T.O. at Marthandam had adduced evidence that the first respondent's lorry bearing registration not TN-74-A-7623 is a light motor goods vehicle and that it is an open lorry. He deposed that the permit for the said lorry was issued on 10.07.1999 and that after renewal, the permit was valid from 21.10.1999 to 21.10.1994. He deposed that on 31.07.1999, the lorry was not covered under a valid permit, and in support of his contentions, he had marked Ex.R3, R.C. of vehicle and Ex.R4, letter showing that the vehicle was not covered under a valid permit at the time of accident.

8. The Tribunal, on observing that the first respondent's vehicle was operated without a valid permit on the date of accident, held that the insurance company is not liable to pay compensation, but however, directed the third respondent to pay the compensation assessed to the claimant and recover the same from the second respondent later.

9. The Tribunal, on scrutiny of Ex.P5, wound certificate, observed that the petitioner had sustained three injuries in the said accident and that the first injury was a grievous one and the other two injuries are simple in nature. Hence, the Tribunal awarded a sum of Rs.7,500/- for one grievous injury and Rs.2,000/- was awarded towards the other two injuries, as compensation to the petitioner.

10. P.W.2, the Orthopeadist in CSI Hospital, Neyyur had adduced evidence that he had examined the petitioner on 01.12.2009 and taken X-rays (Ex.P10). He deposed that the petitioner would not be able to carry weights on his head due to the injuries sustained by him and he had deposed that the petitioner had sustained 40% disability in the said accident and in support of his evidence, he had marked

Ex.P7, disability certificate. Hence, the Tribunal awarded a sum of Rs.80,000/- to the petitioner under the head of disability of 40%; Rs.25,000/- was awarded towards pain and suffering; Rs.10,000/- was awarded towards nutrition; Rs.3,000/- was awarded towards medical expenses; Rs.2,400/- was awarded under the head of loss of income to the petitioner during medical treatment period of 12 days, i.e., from 31.07.1999 to 11.08.1999, taking his daily income as Rs.200/-, Rs.2,400/- was awarded under the head of attender charges for 12 days; Rs.18,000/- was awarded as compensation under the head of loss of income for three months during convalescence period (Rs.200 x 30 x 3); Rs.2000/- was awarded towards damages to clothes and articles. In total, the Tribunal awarded a sum of Rs.1,52,300/- as compensation to the petitioner and directed the third 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 deposit, with costs, within, one month from the date of its order. After such deposit was made, the third respondent was permitted to recover the same from the second respondent.

11. Aggrieved by the award passed by the Tribunal, the third respondent / New India Insurance Company Limited, Nagercoil has preferred the present appeal.

12. The learned counsel for the appellant has contended in his appeal that the Tribunal failed to note that the respondent / claimant has travelled as a gratuitous passenger in a goods vehicle and as such, the 'pay and recovery' direction cannot be issued. It was contended that the Tribunal failed to note on the date of accident, the insured vehicle was not having any permit to ply on the road. It was contended that the Tribunal failed to note that there is a statutory violence by allowing passengers to travel in a goods vehicle and as such, the appellant cannot be directed to pay the compensation and then recover the same. It was contended that the Tribunal failed to see that the Full Bench judgment of this Court, reported in 2009 (1) TNMAC 1 has held that "pay and recovery" direction cannot be issued in cases where the injured/deceased happened to be a gratuitous passenger in a goods vehicle. It was further contended that the Tribunal, after passing an award of Rs.7,500/- for one grievous injury and Rs.2,000/- for simple injuries had awarded a sum of Rs.80,000/- towards disability, which amounts to double compensation and cannot be sustained under law. Hence, it was prayed to set-

aside the award passed by the Tribunal.

13. The learned counsel for the claimant has submitted that the claimant has been hospitalized for a period of 12 days as an inpatient due to multiple bone fracture injuries sustained by him. The doctor had examined the claimant and verified medical records and assessed the disability at 40%. The learned counsel further has submitted that the Tribunal after considering the entire facts of the case had assessed the disability as an appropriate manner. The F.I.R. had been registered against the driver of the van. In order to prove the negligence, F.I.R, observation mahazar, rough sketch, motor vehicle's report had been marked.

14. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels, and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding liability. However, the quantum of compensation is on the higher side. Therefore, this Court restructures the compensation as follows:- Rs.60,000/- is awarded towards loss of earning; Rs.15,000/- towards pain and suffering; Rs.5,000/- towards transport expenses; Rs.5,000/- towards nutrition; Rs.5,000/- towards attender charges; Rs.5,000/- towards loss of earning during medical treatment period; Rs.5,000/- towards loss of amenities and Rs.5,000/- towards medical expenses. In total, this Court awards Rs.1,05,000/- as compensation as it is found to be appropriate. Therefore, this Court scales down the compensation from Rs.1,52,300/- to Rs.1,05,000/-. The rate of interest at 7.5% per annum which had been fixed by the Tribunal remains unaltered and the pay and recovery principle adopted by the Tribunal is confirmed.

15. As per Court records, it is seen that this Court imposed a condition on the appellant to deposit the entire compensation amount. Now, it is open to the claimant to withdraw the modified compensation amount, as per this court's order, mentioned above, with accrued interest thereon, lying in the credit of M.C.O.P.No.84 of 2008, on the file of Motor Accidents Claims Tribunal, Principal Subordinate Judge, Padmanabapuram, after filing a Memo, along with a copy of this order. Likewise, the Insurance Company is permitted to withdraw the excess compensation amount, after filing a Memo.

16. In the result, the above appeal is partly allowed. Consequently, the order passed in M.C.O.P.No.84 of 2008, on the file of Motor Accidents Claims Tribunal, Principal Subordinate Judge, Padmanabapuram, dated 21.09.2011 is modified. There is no order as to costs. Connected miscellaneous petition is closed. r n s To The Principal Subordinate Judge, Motor Accidents Claims Tribunal, Padmanabapuram.

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