

The Branch Manager, Vs. 1.P.S.T.Slogistics Pvt. Limited,2. S.Suresh Kumar

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Court : Chennai

Decided On : Mar-12-2013

Judge : C.S.Karnan

Appellant : The Branch Manager,

Respondent : 1.P.S.T.Slogistics Pvt. Limited,2. S.Suresh Kumar

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:12/03/2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN
C.M.A.(MD)No.606 of 2012 & M.P.(MD)No.1 of 2012 The Branch Manager, New
India Assurance Company Limited, No.41-B, Victoria Street, Tuticorin-628 001. ...
Appellant Vs. 1.P.S.T.SLogistics Pvt. Limited, Rep. by its Administrator, No.1/9/18
Harbour Express Road, Tuticorin.

2. S.Suresh Kumar ... Respondents PRAYER Civil Miscellaneous Appeal is filed
under Section 173 of the Motor Vehicles Act, to set-aside the award and decree
dated 22.11.2011 made in M.C.O.P.No.86 of 2009, on the file of Motor Accidents
Claims Tribunal, Chief Judicial Magistrate Court, Tuticorin. !For Appellant ...
Mr.B.Vijay Karthikeyan ^For Respondents... Mr.R.Vijaykumar for R-1
Mr.S.Meenakshi Sundaram for R-2 - - - :JUDGMENT The appellant / second
respondent has preferred the present appeal against the judgment and decree
passed in M.C.O.P.No.86 of 2009, on the file of Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court, Tuticorin.

2. The short facts of the case are as follows:- The petitioner has filed the claim in M.C.O.P.No.86 of 2009, claiming compensation of a sum of Rs.1,81,000/- from the respondents, for the damages caused due to the fall of his company's container in a motor vehicle accident. It was submitted that on 26.09.2008, at about 1 p.m., the first respondent's lorry bearing registration not TN-69-M-7786, driven by its driver at a high speed and in a rash and negligent manner had caused the fall of the petitioner's container on the Thoothukudi Harbour bye pass road near 'Indane' godown. As a result, the container was heavily damaged and a surveyor was appointed to assess the loss. It was submitted that the surveyor had given a report along with photos and estimated the damages at Rs.1,65,000/-. It was submitted that the transport expenses incurred for taking the damaged container to the workshop near Indane godown was Rs.16,000/-. It was stated that the petitioner had already paid the damaged of Rs.1,40,000/- to the owner of the container. Hence, the petitioner has filed the claim against the first and second respondents, who are the owner and insurer of the lorry bearing registration not TN-69-M-7786.

3. The first respondent, in his counter has denied the averments in the claim that the petitioner had paid Rs.1,60,000/- towards rent for hiring a crane and paid Rs.25,000/- for taking the container to C.F.S.yard. It was submitted that as the first respondent's lorry had been with the second respondent, only the second respondent can be held liable to pay the damages, if so decided by the Tribunal.

4. The second respondent in his counter has submitted that the container damaged in the accident was a small one and that damages claimed by the petitioner was excessive. The averments in the claim regarding payment made by the petitioner for transporting the container was not admitted. It was submitted that the petitioner should prove that the first respondent's vehicle was covered under a valid R.C, permit and that the driver of the first respondent's vehicle had a valid driving licence to drive the vehicle at the time of accident. It was submitted that the petitioner can claim compensation only on the basis of the transit insurance policy taken for the said container and that as no transit insurance policy had been taken, the petitioner cannot claim any compensation.

5. The Motor Accidents Claims Tribunal had framed two issues for consideration in the case, viz., "(i) Due to whose negligence was the accident caused? (ii) Is the petitioner entitled to get compensation? If so what is the quantum?" 6. On the petitioner's side, the petitioner was examined as P.W.1 and eleven documents were marked as Exs.P1 to P11, viz., Ex.P1-copy of F.I.R., Ex.P2-copy of report of surveyor of J.B.Photo company, Ex.P3-original receipt issued by Grace Crane service company, Ex.P4-receipt issued by the owner of the container to the petitioner, Ex.P5-lawyer's notice, Ex.P6-reply notice, Ex.P7- copy of rough sketch, Ex.P8-copy of Motor Vehicle Inspector's report, Ex.P9-copy of charge sheet, Ex.P10-copy of observation mahazar and Ex.P11-copy of Criminal Court judgment. On the respondent's side, the Superintendent attached to R.T.O, Jagadeesan was examined as R.W.1 and two documents were marked as Exs.R1 and R2, viz., Ex.R1-the insurance policy for the first respondent's lorry containing the terms and conditions, Ex.R2-the authorization letter to get the details from TNPL as per the right to information act.

7. P.W.1, Nagarajan, the petitioner had adduced evidence that is corroborative of the statements made by him in the claim and in support of his evidence, he had marked Exs.P1 to P11. P.W.1 deposed that their company had entered into an agreement with the first respondent to transport their goods through container in the first respondent's lorry bearing registration No. TN- 69-M-7786 and that as per the agreement, they had loaded a container with goods, in the first respondent's lorry on 25.09.2008, when the lorry was proceeding towards Thoothukudi Harbour, and when it was near the bye pass road, the lorry driver had driven the lorry at a high speed and in a rash and negligent manner, as a result of which, the lorry had capsized and that the container carrying the goods of the petitioner's firm had fallen down on the road and sustained damages. He further deposed that a lawyer's notice was sent to the first respondent and that subsequently a surveyor had been appointed to assess the damage. He deposed that the surveyor had given the report regarding damage together with photos. He deposed that the petitioner's firm had spent a sum of Rs.16,000/- to hire a crane and take the damaged container. He deposed that a criminal case had been filed against the first respondent's vehicle driver by the Thoothukudi South Zone Police Station in Crime No.768 of 2008 under Section 279 and 337 of IPC.

8. The Tribunal, on scrutiny of Exs.P1 to P11 and on observing that the first respondent's driver had admitted his guilt and paid the fine as per Ex.P11, Criminal Court judgment, held that he accident had been caused by the rash and negligent driving of the first respondent's lorry driver.

9. The Tribunal observed that though it was contended on the side of the respondent that the receipt issued for rental charges for crane issued by the Grace Crane Service Department for Rs.16,000/- was not an authentic one as no revenue stamp had been affixed in the said receipts, the respondent's had not chosen to examine the officers of the Grace Crane Service Company to prove its contentions. It was also contended on the respondent's side that the exact damages paid for each goods carried in the container had not been shown on the petitioner's side and it was contended that the petitioner had not paid the damages for the goods to the owner, viz., T.K.M. Company. However, the Tribunal observed that the respondent had not taken any steps to prove that the bill marked as Ex.P4 for Rs.1,40,000/- was a false one. Hence, the Tribunal on considering the oral and documentary evidence and on observing that the first respondent's lorry had been covered with a policy of insurance, with the second respondent, held both the first and second respondents liable to pay the compensation of Rs.1,56,000/- to the petitioner and directed them to pay 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 two months from the date of its order.

10. Aggrieved by the award passed by the Tribunal, the second respondent / New India Assurance Company Limited, has preferred the present appeal.

11. The learned counsel for the appellant has contended in his appeal that the Tribunal failed to note that no premium was received by the appellant to cover the goods carried in the vehicle. It was contended that the learned Tribunal failed to note that the owner of the container has not filed any claim petition and as such, the claim petition itself is not maintainable. It was contended that the Tribunal failed to note that the appellant is not liable in respect of goods held in trust and carried in the vehicle. It was contended that the Tribunal failed to note that the terms of the insurance policy issued by the appellant clearly exclude the liability of

the appellant in respect of the goods carried in the vehicle. It was contended that the Tribunal erroneously appreciated the case as if the claimant is the owner of the container whereas the specific case of the appellant is that they are not the owner of the container. Hence, it was prayed to set-aside the award passed by the Tribunal.

12. The learned counsel for the claimant has submitted that immediately after the first respondent's lorry had capsized, the same has been informed to the first respondent through telephone and also a licenced surveyor was appointed for purpose of assessment of damage caused to the petitioner's goods which was then estimated as Rs.1,65,000/-. Besides, the petitioner's company had spent a sum of Rs.16,000/- towards crane hire charges and had also spent Rs.25,000/- towards shifting charges of the damaged container to C.F.S.Yard. As such, the claimant had claimed Rs.1,81,000/- as compensation, even after omitting the shifting charges. In order to prove the accident and damage of goods, the claimant had marked necessary documents, viz., F.I.R. Surveyor report, crane service charges particulars, rough sketch, Motor Vehicle Inspector's report, observation mahazar, charge sheet and judgment of the Criminal Court. The highly competent counsel has further submitted that the learned Tribunal had framed two issues and after recording the oral and documentary evidence of both sides, had decided the two issues in favour of the claimant. As such, there is no lacuna in the impugned award.

13. On verifying the factual position 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 liability and quantum of compensation. This Court further opines that Tribunal had decided the quantum of compensation on the basis of documentary facts especially Ex.P2, Surveyor report and crane service charges. Therefore, this Court is not inclined to interfere with the impugned award of the Tribunal. As per Court records, it is seen that that this Court imposed a condition on the appellant on 05.06.2012, to deposit the entire compensation amount with interest and costs.

14. Now, it is open the claimant to withdraw the entire compensation amount together with interest lying in the credit of M.C.O.P.No.86 of 2009, on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tuticorin, after filing a Memo, along with a copy of this order.

15. In the result, the above appeal is dismissed. Consequently, the order passed in M.C.O.P.No.86 of 2009, on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tuticorin, dated 22.11.2011 is confirmed. There is no order as to costs. Connected miscellaneous petition is closed. r n s To The Chief Judicial Magistrate Court, Motor Accidents Claims Tribunal, Tuticorin.

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