

The Branch Manager, Vs. 1.Velappan

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Court : Chennai

Decided On : Mar-01-2013

Judge : C.S.Karnan

Appellant : The Branch Manager,

Respondent : 1.Velappan

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

01. 03/2013 CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN C.M.A(MD) No.817 of 2012 and M.P.(MD)No.1 of 2012 The Branch Manager, National Insurance Company Limited, Anguvilas Building, North Car Street, Nagercoil. .. Appellant vs 1.Velappan 2.Henry 3.The Branch Manager, Oriental Insurance Company, Vadaseri Bus Stand, Nagercoil. .. Respondents Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 23.12.2011, made in M.C.O.P.No.17 of 2010, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Padmanabhapuram. !For Appellant ... Mr.S.Srinivasa Raghavan ^For Respondent ... Mr.H.Thayumanasamy for R1 Mr.T.Hajapathiroy for R2 Mr.S.Murugan for R3 :JUDGMENT The appellant/2nd respondent has preferred the present appeal in C.M.A.(MD)No.817 of 2012, against the judgment and decree passed in M.C.O.P.No.17 of 2010, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Padmanabhapuram.

2. The petitioner has filed the claim in M.C.O.P.No.17 of 2010, claiming compensation of a sum of Rs.4,00,000/- from the respondents for the injuries sustained by him in a Motor Vehicle Accident. It was submitted that on 12.01.2009, at about 12.00 a.m., when the petitioner was riding his Hero Honda Motorcycle bearing registration not TN-74V-8908 and proceeding towards Chettikulam in Nagercoil, in order to purchase things and when he was near Ramavaramapuram Tourist Bungalow, the 1st respondent, who was riding his Kinetic Honda Motorcycle bearing registration not TN-74F-2593, on the same road, rode the motorcycle in a rash and negligent manner and suddenly crossed the main road, without following the traffic rules, in order to go to his house at Parvathipuram and dashed the vehicle ridden by the petitioner and caused the accident. In the impact, the petitioner was thrown out of his vehicle and sustained severe and grievous fracture of bone in his left wrist. Both the petitioner and the 1st respondent were admitted in the Thilagaram Nursing Home, Nagercoil. The Police officials, after getting information of the accident from the doctor, who had attended to them, enquired about the matter with the 1st respondent's wife and filed a F.I.R against the petitioner. It was submitted that as the 1st respondent is an influential person and also a resident of Nagercoil, the Police had filed the F.I.R, even without conducting an enquiry with the petitioner. The petitioner was treated as an inpatient at the hospital till 15.01.2009 and was readmitted on 20.01.2009 and received treatment as an inpatient till 26.01.2009 and x rays were taken and operations were conducted by the doctors. In spite of treatment, as the injuries sustained by the petitioner has not healed, the petitioner is not able to do his avocation as a goldsmith. Hence, the petitioner has filed the claim against the 1st, 2nd and 3rd respondents. The 1st and 2nd respondents are the owner and insurer of the Kinetic Honda Motorcycle bearing registration not TN-74F-2593 and the 3rd respondent is the insurer of the petitioner's Hero Honda motorcycle bearing registration not TN-74V-8908.

3. The 2nd respondent, in his counter has denied the averments in the claim that the accident was caused by the negligence of the 1st respondent. It was submitted that the accident was caused only due to the rash and negligent driving of the motorcycle by the petitioner and that the petitioner had driven his vehicle at a high speed and dashed it against the 1st respondent's motorcycle. It was submitted that

as the traffic Police had registered a case against the petitioner and had also filed the charge sheet against the petitioner alone, the 2nd respondent cannot be held liable to pay any compensation. The averments in the claim regarding age, income and occupation of the petitioner was also not admitted. It was submitted that the claim was excessive.

4. The Motor Accident Claims Tribunal had framed three issues for determination in the case namely: (1) Was the accident caused by the rash and negligent riding of the motorcycle by the 1st respondent?; (2) Are the respondents liable to pay compensation to the petitioners?; (3) What is the quantum of compensation which the petitioner is entitled to get?.

5. On the petitioners side, the petitioner was examined as PW.1 and eleven documents were marked as Exs.P1 to P11 namely: Ex.P1-copy of F.I.R dated 12.01.2009; Ex.P2-copy of observation mahazar dated 12.01.2009; Ex.P3-copy of rough sketch; Ex.P4-Motor vehicle Inspector's Report dated 19.01.2009; Ex.P5-copy of wound certificate dated 14.01.2009; Ex.P6-discharge summary dated 01.05.2009; Ex.P7-medical bills; Ex.P8-repair charges for vehicle dated 19.01.2009; Ex.P9-copy of ration card for the year 2005-2009; Ex.P10-copy of Criminal Court judgment of Judicial Magistrate not III, Nagercoil, dated 18.06.2010; Ex.P11-copy of members identity card. On the respondents side one witnesses was examined and no document was marked.

6. PW.1, had adduced evidence which is corroborative of the statements made by him in the claims and in support of his evidence, he had marked exhibits P1 to P11. He further deposed that the accident had been caused by the rash and negligent driving of the 1st respondent. He deposed that the criminal case filed against him had been dismissed and in support of his evidence, he had marked Ex.P10-Criminal Court judgment. The tribunal observed that the 1st respondent had not entered appearance to rebut the statements of PW.1, regarding manner of accident. The tribunal observed on scrutiny of copy of accident register and would certificate that the petitioner had sustained injuries in the said accident and received treatment at the hospital. Hence, the tribunal on considering the oral and documentary evidence, held that the accident had been caused by the rash and

negligent driving of the 1st respondent and hence the 2nd respondent, being the insurer of the 1st respondent's vehicle liable to pay compensation. The claim as against the 3rd respondent was dismissed.

7. The tribunal on scrutiny of Ex.P5-wound certificate and Ex.P6- discharge summary observed that one injury sustained by the petitioner in the accident was a grievous injury and hence the tribunal awarded a sum of Rs.10,000/- under the head of grievous injury. On scrutiny of Ex.P6, it is seen that the petitioner had received treatment as an inpatient at hospital from 12.01.2009 to 15.01.2009 and from 20.01.2009 to 26.01.2009. Hence, the tribunal on taking the loss of income of the petitioner for one day as Rs.200/-, awarded a sum of Rs.2,200/- as compensation under the head of loss of income during medical treatment period. The tribunal on considering that the petitioner would have paid a sum of Rs.100/- towards attender charges on a day, awarded a sum of Rs.1,100/- towards attender charges during treatment period. The tribunal on observing that due to the injuries sustained by the petitioner, he would not have been able to do any work for a period of three months after the accident awarded a sum of Rs.18,000/- as compensation under the head of loss of income during convalescence period of three months. The tribunal awarded a sum of Rs.45,110/- towards medical expenses as per medical bills marked as Ex.P7; Rs.6,173/- was awarded as compensation for damages caused to his motorcycle and Rs.10,000/- was awarded under the head of pain and suffering; Rs.2,000/- was awarded for transport expenses and Rs.7,500/- was awarded under the head of nutrition; Rs.1,000/- was awarded towards damage to clothes. In total, the tribunal awarded a sum of Rs.1,03,083/- as compensation to the petitioner and directed the 2nd 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 one month from the date of its order.

8. Aggrieved by the award passed by the tribunal, the 2nd respondent/National Insurance Company Limited, Nagercoil, has preferred the present appeal. The learned counsel for the appellant has contended that the tribunal ought to have found that all the records and documents pertaining to the accident in question with specific reference to the Criminal Court records speaks of fault and

negligence on the part of the injured claimant only and the tribunal ought not to have ignored the evidentiary value for such document. It was contended that the tribunal ought to have seen that the F.I.R and charge sheet relating to the accident in question have been laid only against the injured claimant and hence there is no justification for the tribunal to hold that the driver of the insured vehicle was negligent in his driving. It was contended that the tribunal ought not to have found that the accident in question took place on account of the negligence of the 1st respondent on the basis of extraneous materials and not by appreciating the documents and evidence available on record. Hence, it was prayed to set aside the award passed by the tribunal.

9. The learned counsel for the claimant submits that even though the F.I.R had been registered against the claimant herein, the accident had occurred only due to the rash and negligent riding of the 1st respondent's motorcycle. The tribunal had fastened the liability on the basis of observation Mahazar and rough sketch which are indicative of the fact that the rider of the 1st respondent's motorcycle had committed the said accident. Besides, the offending vehicle had been insured with the appellant herein. The tribunal had not granted adequate compensation to the claimant.

10. Per contra, the learned counsel for the Insurance Company submits that the doctor was not examined in order to prove the nature of injuries and disability sustained. As such, lacuna has arisen in the impugned order. The learned counsel further submits that once the F.I.R had been registered against the claimant, it is evident that contributory negligence has to be attributed in the instant case, since both the vehicles were involved in causing the accident. The learned counsel for the 3rd respondent/Oriental Insurance Company submits that the 3rd respondent is only a formal party and no claim has been made against the 3rd respondent.

11. On going through the facts and circumstances of the case and arguments advanced by the learned counsels on all sides 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, as no doctor had been examined in this case. Therefore, there is a

defect in the said award. Hence, this Court restructures the compensation as follows: Rs.10,000/- is awarded towards injuries sustained by the claimant; Rs.2,000/- towards attender charges; Rs.2,000/- towards nutrition; Rs.2,000/- towards transport; Rs.2,000/- towards loss of earning during medical treatment period; Rs.10,000/- towards pain and suffering and Rs.48,000/- is awarded towards medical expenses. In total, this Court awards Rs.76,000/- as total compensation to the claimant. Therefore, this Court scales down the compensation from Rs.1,03,083/- to Rs.76,000/- as it is found to be appropriate in the circumstances of the case. This Compensation amount will carry interest at the rate of 7.5% per annum. As per the Court records, it is seen that on 16.07.2012, this Court imposed a condition on the appellant to deposit 50% of the award amount. Now, this Court directs the appellant to deposit the balance compensation as per this Courts order, together with interest within a period of four weeks from the date of receipt of this order.

12. After such a deposit being made, it is open to the claimant to withdraw the entire compensation amount, together with interest, as per this Court's modified order, lying in the credit of M.C.O.P.No.17 of 2010, on the file of Motor Accident Claims Tribunal, Subordinate Court, Padmanabhapuram, after filing a memo along with a copy of this order.

13. In the result, the above appeal is partly allowed. Consequently, the award and decree passed in M.C.O.P.No.17 of 2010, on the file of Motor Accident Claims Tribunal, Subordinate Court, Padmanabhapuram, dated 23.12.2011, is modified. Consequently, connected miscellaneous petition is closed. No costs. ub To 1.The Motor Accident Claims Tribunal, Subordinate Court, Padmanabhapuram. 2.The Section Officer, VR Section, High Court, Madras.

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