



C.M.A.(MD)No.361 of 2019

CBEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 28.11.2022

Delivered On : 09.02.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.361 of 2019

The Divisional Manager,
M/s.Cholamandalam MS General
Insurance Company Ltd.,
D.NO.384, 1st Floor, Dindigul Highway Road,
Kalavasal, Madurai 625 010.
(Insurer of the vehicle involved
in the accident)

.. Appellant /2nd Respondent

Vs.

1.Arumugam
2.Karuppsamy

...1st Respondent/Petitioner

... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.9 of 2016 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Aruppukottai, dated 31.10.2018.

For Appellant

: Mrs.K.R.Shivasankari

For Respondents

: Mr.M.Jothi basu (for R1)

Mr.C.Susikumar (for R2)



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JUDGMENT

WEB COPY This Civil Miscellaneous Appeal has been filed against the award, dated 31.10.2018, made in M.C.O.P.No.9 of 2016, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Aruppukottai. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the claim petition in M.C.O.P.No.9 of 2016, is as follows:

On 04.04.2014, when the petitioner was riding his bicycle keeping the left side of the road, a vehicle (TATA ACE LMV) bearing registration No.TN 67 K 5515 came in a rash and negligent manner, dashed against the petitioner from behind. The claimant sustained multiple injuries all over the body. He was taken to Shanthi Hospital, Aruppukottai. After getting first-aid, he was shifted to Vellammal Medical College Hospital, Madurai and he took treatment as inpatient from 11.12.2014 to 27.12.2014 and he undergone surgery on his right knee. The petitioner was working as a welder and he was earning a sum of Rs.15,000/- per month. The petitioner suffered disablement and loss of income. Hence, he claimed a sum of Rs.11,00,000/- as compensation.



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3. A brief substance of the counter filed by the second respondent in M.C.O.P.No.9 of 2016, is as follows:

The manner of accident as narrated in the claim petition is false. The first respondent's vehicle's driver rode the vehicle in a slow and cautious manner, observing the traffic rules. It was the petitioner, who negligently dashed his bi-cycle against the load auto. The second respondent is not liable to pay compensation. The petitioner sustained only simple injuries. There was no permanent disability. The petitioner has to prove the age and income. The claim is exorbitant.

4. 1 witness was examined and 14 documents were marked, on the side of the claimant. 2 witnesses were examined and 1 document was marked, on the side of the respondent. One document was marked as Ex.C.1. After considering both sides, the Tribunal awarded a sum of Rs.5,10,702/- along with interest at the rate of 9.5% per annum as compensation to be paid by the second respondent/appellant herein.

5. Against the award, the second respondent/appellant filed this appeal on the following grounds:

5.1. The tribunal has erred in fastening the liability on the appellant/second respondent, ignoring that there was clear violation of policy conditions on the part of the insurer of the vehicle. There was no fitness certificate for the insured vehicle.



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Fitness certificate expired on the date of accident. The loss of income assessed by the tribunal is excessive. The tribunal wrongly fixed the monthly income as Rs. 15,000/- and for a period of nine months granted a sum of Rs.1,35,000/- as compensation, which is excessive. The tribunal awarded Rs.1,00,000/- towards pain and suffering, which is excessive. The rate of interest fixed by the tribunal is excessive.

6.Copy of the FIR was marked as Ex.P.1. Wound certificate was marked as Ex.P.2, Ex.P.3 was M.V.I report, Ex.P.4 was observation mahazar, Ex.P.5 was the rough sketch, Ex.P.6 was the charge sheet, Ex.P.7 was the copy of the criminal Court judgment. It is seen that the driver of the second respondent herein has admitted his guilt and he paid fine before the learned Judicial Magistrate, Aruppukottai. On the basis of the evidence of P.W.1 and on the basis of the Ex.P.1 to Ex.P.7, the tribunal fixed the liability on the second respondent's driver, which is reasonable.

7. On the side of the appellant, it is stated that there was no valid fitness certificate at the time of accident. The tribunal has made a wrong observation that it was the duty of the insurance company to verify the availability of fitness certificate at the time of issuing policy certificate.



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8. On the side of the respondents, it is stated that there was no point raised in the counter filed by the appellant regarding the availability of the fitness certificate. Ex.R.1 was a copy of the insurance policy. R.W.1 and R.W.2 have deposed, that at the time of collecting of premium FC was verified. Even if there was any breach of policy condition, it is the duty of the insurance company to pay compensation to the claimant and then, to recover the same from the owner of the vehicle. A judgment of this Court reported in **2015 (2) TN MAC 660** in the case of ***E.Manoharan Vs., Suresh and others***, is cited, wherein it is stated as follows:

“Non-possession of fitness certificate being violation of policy condition by owner/insured, insurer can be directed to pay and recover so far as third party claimants are concerned”

9. On the side of the claimant, another judgment of this Court reported in **2017 (2) TN MAC 477** in the case of ***United India Insurance Co., Ltd., Vs., Sidheshwaran and others*** is cited, wherein, it is stated as follows:

“Liability of insurer - extent of - offending vehicle/ambulance not having fitness certificate - held, amounts to violation of policy condition - tribunal holding insurer liable to pay, not proper - applying doctrine of pay & recover, insurer directed to pay and recover.”



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10. On the side of the appellant, it is stated that on the date of issuance of policy, fitness certificate was available. FC was valid from 01.03.2013 to 27.02.2014. In the absence of FC, the owner will be liable and not the insurance company.

11. On the side of the second respondent herein - owner of the vehicle, it is stated that it is the duty of the insurance company to look into the fitness certificate.

12. A perusal of the records reveals that the appellant has not raised any objections regarding the fitness certificate in the counter filed before the tribunal. Only at the time of trial, the question regarding the fitness certificate was raised by the appellant. It is seen that the fitness certificate was available on the date of issuance of the insurance policy and the same was admitted by R.W.2.

13. The appellant has not pleaded anything regarding the FC in the counter. The appellant has not chosen to examine officials from the RTO office to substantiate the claim. Unless pleaded in the counter, the appellant is not entitled to introduce a new case at the time of trial or at the appeal stage. Hence, it is decided that the appellant cannot question the FC.



14. It is seen that the medical board issued the disability certificate, which was marked as Ex.C1. Ex.C.1 reveals that the petitioner sustained 30% permanent disability. The tribunal awarded Rs.3,000/- per percentage of disability, which is reasonable. The claimant is entitled to 90,000/- towards permanent disability. The tribunal fixed the income as Rs.500/- per day and for the period of treatment, the tribunal fixed the temporary loss of income as Rs.15,000/- X 9 =1,35,000/-. Considering the period of treatment and considering the period of rehabilitation, it is decided that the amount fixed by the tribunal is reasonable. Ex.P.8 and Ex.P.9 were the medical bills. The tribunal has awarded Rs.90,702/- as compensation for the medical expenses.

15. On the side of the appellant, it is stated that there is no evidence as to future medical expenses and the amount awarded towards future medical expenses is excessive. A judgment of this Court reported in the case of ***United India Insurance Co., Ltd., Vs., M.Venkatessan*** reported in ***2017 (2) TNMAC 112*** is cited, on the side of the appellant.

16. The tribunal has awarded Rs.5,000/- towards transport expenses, Rs. 90,702/- towards medical expenses, Rs.90,000/- towards partial permanent disability, Rs.10,000/- towards loss of amenities and Rs.10,000/- towards loss of expectations of life, which are all reasonable.



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17. The Tribunal has awarded Rs.18,000/- towards extra nourishment, Rs. 1,000/- towards damage articles, Rs.50,000/- towards future medial expenses, Rs. 1,000/- towards other expenses, Rs.1,00,000/- towards pain and sufferings, which are all excessive. The amount under those heads are to be reduced. The compensation is awarded as follows:

Loss of Earning	- Rs.1,35,000/-
Transport Expenses	- Rs. 5,000/-
Extra Nourishment	- Rs. 10,000/-
Damage to cloth and articles	- Rs. 500/-
Medical expenses	- Rs. 90,702/-
Future medical expenses	- Rs. 20,000/-
Other expenses	- Rs. 500/-
For Partial permanent disability	- Rs. 90,000/-
Pain and sufferings	- Rs. 50,000/-
Loss of amenities	- Rs. 10,000/-
Loss of expectations of life	- Rs. 10,000/-

Total	Rs.4,21,702/-

18. It is seen that the tribunal has awarded compensation along with interest at the rate of 9.5% per annum, which is excessive and the same is reduced to 7.5% per annum.



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19. In the result, the Civil Miscellaneous Petition is **partly allowed**.

No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.5,10,702/- to **Rs. 4,21,702/-**.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.4,21,702/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. **Excess amount, if any, shall be refunded to the appellant / Insurance Company.**

(iii) On such deposit being made by the appellant / Insurance Company, the first respondent herein / claimant is permitted to withdraw the same, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any.

09.02.2023

Index : Yes/No

Internet : Yes/No

Rmk



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To

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- 1.The Motor Accident Claims Tribunal
(Subordinate District Judge),
Aruppukottai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

Rmk

Pre-delivery Judgment made in
C.M.A.(MD)No.361 of 2019

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