



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.11.2016

Coram:

WEB COPY

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

C.M.A (MD) No. 296 of 2015

and

M.P. (MD) No. 1 of 2015

THE ORIENTAL INSURANCE COMPANY LTD.,
REP. BY ITS BRANCH MANAGER
D.D.J CENTRE, 1ST FLOOR,
OPPOSITE TO VADASERI BUS STOP,
NAGERCOIL.

.. Appellant / 2nd Respondent

-Vs-

1. CHITHIRAI PANDI .. 1st Respondent/ Petitioner

2. SIVAKUMAR .. 2nd Respondent/ 1st Respondent
(2nd Respondent remained
exparte before the Lower Court)

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment made in MCOP NO. 697/2013 dated 07.03.2014 on the file of the Motor Accidents Claims Tribunal Cum Special Sub Judge, Tirunelveli.

For Appellant : Mr. K. Bhaskaran
For Respondents : Mr. V. Sasikumar for R1

JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree made in MCOP No. 697/2013 dated 07.03.2014 on the file of the Motor Accidents Claims Tribunal Cum Special Sub Judge, Tirunelveli.

2. The accident took place on 22.01.2011 at about 7.30 p.m near Athikadu-Meyyur road and it is a case of grievous injury, in which the claimant sustained fractures in right thigh (type II), lacerated wound to an extent of 5.1 c.m over the right thigh and injuries over the right knee, left knee and all over the body. Considering the nature of the injury, the Tribunal, awarded a sum of Rs.7,28,460/- as total compensation under different heads.

<https://hcservices.ecourts.gov.in/hcservices/>
3. The learned counsel appearing for the appellant has seriously contended that the driver, who was driving the vehicle did not possess the valid driving licence and therefore the appellant/Insurance Company is to be exonerated from the liability. He further contended that the tribunal had awarded



excess compensation in respect of the following heads:

i) The multiplier adopted by the tribunal in respect of 35% of partial permanent disability is erroneous.

ii) The amount of Rs.40,000/- awarded for discomfort.

In respect of the amount awarded under the other heads are not seriously disputed by the learned counsel for the appellant. Further, according to him, the tribunal failed to apply the principles of Pay and Recovery, since, it is a case where the vehicle was driven without any valid Driving Licence.

4. The learned counsel appearing for the respondent opposed the contentions of the appellant by stating that the tribunal has considered the partial permanent disability of 35% sustained by the claimant by applying the multiplier and also considered the fact that the claimant was an agriculturist.

5. Considering the above submissions made by the respective counsel and also considering the fact that the claimant was an agriculturist by applying the multiplier, this Court is of the view that the monthly income of the claimant was fixed at Rs.4,500/- and therefore, the amount of Rs.40,000/- awarded for discomfort is excessive. Hence, this Court is of the opinion that the award amount of Rs.2,45,700/- awarded for partial permanent disability is excessive and this Court in various judgments fixed Rs.3,000/- for 1% partial permanent disability and accordingly, the respondent/claimant is entitled for compensation amount of Rs.1,05,000/-.

6. Considering the same, the quantum of compensation awarded under the head of permanent disability is reduced from Rs.2,45,700/- to Rs.1,05,000/- and in respect of other heads, the amount awarded by the Motor Accidents Claims Tribunal is confirmed.

7. Further, the learned counsel for the appellant objected the interest at the rate of 9% awarded by the tribunal by stating that normally, the tribunal awards only 7.5% interest and this a case, in which the tribunal has committed an error by awarding 9% interest, which is abnormal.

8. Considering the said submission made by the learned counsel appearing for the appellant, this Court is inclined to reduce the interest from 9% to 7.5%. Considering the submission of the learned counsel for the appellant that the driver of the vehicle did not possess the valid driving licence at the time of driving the vehicle and therefore the appellant/Insurance Company is to be exonerated from the liability, this court is of the view to exonerate the appellant /Insurance Company by way of adopting the principles of Pay and Recovery. In respect of other heads, the findings of the tribunal is to be confirmed.

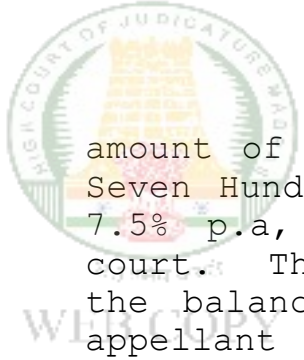


"8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing court shall, take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

11. In the case on hand, the Tribunal while awarding the compensation directed the appellant to pay the award amount at the first instance and thereafter, recover from the owner of the vehicle.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the award amount of Rs.7,28,460/- is reduced to Rs.5,87,760/- with 7.5% interest p.a. Consequently, connected miscellaneous petition is also closed. No costs.

13. The learned counsel for the appellant represents that the entire award amount has already been deposited and the respondent/claimant is permitted to withdraw the modified award



amount of Rs.5,87,760/- (Rupees Five Lakhs Eighty Seven Thousand Seven Hundred and Sixty only) along with the accrued interest at 7.5% p.a, by filing a necessary application before the trial court. The appellant Insurance Company is permitted to withdraw the balance excess amount already deposited. Accordingly, the appellant Insurance Company is at liberty to recover the award amount from the owner of the vehicle/2nd respondent by filing appropriate proceedings before the Executing Court.

Sd/-
Assistant Registrar (CS-I)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.Special Sub Judge,
Motor Accidents Claims Tribunal,
Tirunelveli.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to MR.K.Bhaskaran, ADVOCATE, SR NO: 65526

vs
sva/mr/14.02.2017/4p/4c

C.M.A (MD) No.296 of 2015
and
M.P. (MD) No. 1 of 2015
03.11.2016