



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.11.2017
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)Nos.1138 of 2016
and 536 of 2017
and
C.M.P.(MD).No.10252 of 2016

C.M.A.(MD)No.1138 of 2016

The Branch Manager
United India Insurance Company Limited,
Micro Office,
Robin Complex II Floor,
Thingal Santhai, Eranniel Village,
Kalkulam Taluk,
Kanyakumari

... Appellant / 2nd Respondent

Vs.

1.Suresh
2.Satheesh Kumar
3.Thanesh Kumar
4.Justus
5.The Branch Manager,
Cholamandalam MS General Insurance,
2nd Floor, Dare House Branch Office,
No.2, NSC Bose Road,
Chennai - 600 001.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.03.2015 passed in M.C.O.P.No.7 of 2013 on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Nagercoil.

For Appellant : Mr.A.Shajahan
For R-1 : Mr.R.Murugan
For R-2 to R-4 : No Appearance
For R-5 : Ms.R.Shivashankari
for Mr.S.Srinivasa Raghavan

C.M.A.(MD)Nos.536 of 2017



1.Satheesh Kumar

2.The Branch Manager

United India Insurance Company Limited,
Micro Office,
Robin Complex II Floor,
Thingal Santhai Eranniel Village,
Kalkulam Taluk,
Kanyakumari.

3.Thaneshkumar

4.Justus

5.The Branch Manager,

Cholamandalam MS General Insurance,
2nd Floor, Dare House Branch Office,
No.2, NSC Bose Road,
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Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.03.2015 passed in M.C.O.P.No.7 of 2013 on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Nagercoil.

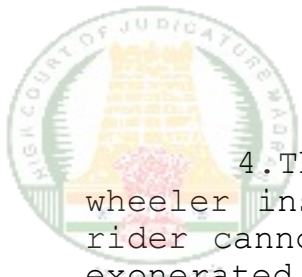
For Appellant	: Mr.R.Murugan
For R-1, 3 & 4	: No Appearance
For R-2	: Mr.A.Shajahan
For R-5	: Ms.R.Shivashankari for Mr.S.Srinivasa Raghavan

COMMON JUDGMENT

Heard the learned counsel on either side.

2. Both the insurance company as well as the claimant have filed appeals questioning the impugned award. The insurance company would contend that they must be either exonerated or composite negligence must be fixed. On the other hand, the claimant seeks enhancement of compensation awarded to him.

3. One Suresh was the pillion rider. One Satheeshkumar was riding the two wheeler. The two wheeler was proceeding from Surulode to Ponmanai. The Tempo Van belonging to the fourth respondent, which is insured with Cholamandalam MS General Insurance was coming from Ponmanai to Surulode in the opposite direction. The road was a curved one. The two wheeler was involved in a head on collision with the tempo van. In the process, the claimant Suresh who was sitting as the pillion rider suffered fractures on both the legs. The Tribunal fixed the negligence on the two wheeler rider and awarded a sum of RS.4,24,351/-. The liability was fastened on the appellant insurance company which had insured the two wheeler.



4. The appellant insurance company contended that the two wheeler insured only under the Act Policy. Therefore, the pillion rider cannot be considered as a third party and hence, they must be exonerated. This cannot be accepted. The Hon'ble Supreme Court had recently held that in the case of pillion rider suffering injuries and the vehicle having only Act Policy, the insurer must satisfy the award and thereafter, proceed against the owner of the vehicle. In other words, pay and recovery principle has to be applied. Therefore, the award will have to be modified to that extent.

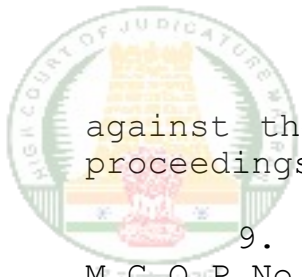
5. As regards, the question of apportioned negligence and consequential liability, it can be seen that FIR was registered only against the rider of the two wheeler and not against the van driver. In fact, after an investigation, the police filed the final report- Ex.R-2 only against the two wheeler rider namely Satheeshkumar. More than anything else, the said Satheeshkumar was not examined as a witness before the Tribunal by the appellant. He also remained *ex parte*, even though, he was shown as a party/respondent.

6. In these circumstances, this Court is not in a position to interfere with the findings arrived at by the Tribunal that the two wheeler rider, was at fault. The negligence was rightly fixed on the two wheeler rider.

7. Coming to the question of enhancement, it has been seen that the claimant had suffered very serious injures in both his legs. He was as an inpatient for more than 37 days. He incurred medical expenditure to the tune of Rs.1,70,351/-. Even though 40% disability was arrived at, only Rs.80,000/- was awarded under the said head. Therefore, this Court is of the view that the compensation payable to the claimant will have to be reworked as under:-

Sl.No	Heads	Amount in Rupees
1.	Loss of income	Rs. 35,000/-
2.	Medical expenditure including future expenses	Rs. 2,50,000/-
3.	Extra Nourishment	Rs. 25,000/-
4.	Pain and suffering	Rs. 50,000/-
5.	Attender Charges	Rs. 10,000/-
6.	Disability Compensation	Rs. 1,20,000/-
7.	Loss of amenities	Rs. 50,000/-
	Total	Rs.5,40,000/-

8. The compensation payable to the claimant is enhanced from Rs.4,24,351/- to Rs.5,40,000/-. The appellant insurance company shall pay the said amount to the claimant and thereafter proceed



against the owner for the recovery of the same in this very same proceedings by filing execution petition.

9. Therefore, the award dated 14.03.2015, passed in M.C.O.P.No.7 of 2013 on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Nagercoil is modified as indicated above.

10. The appellant insurance company is directed to pay the entire compensation amount of Rs.5,40,000/- with interest at 7.5% per annum and costs from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this judgement, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the same, less the amount already withdrawn by him, if any. Thereafter, the appellant is at liberty to recover the same from the owner of the vehicle in the very same proceedings by filing Execution Petition.

11. Accordingly, C.M.A.(MD)No.1138 of 2016 is partly allowed and C.M.A.(MD)No.536 of 2017 is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal Court/
Principal Sub Court, Nagercoil.

2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.S.SRINIVASA RAGHAVAN,Advocate,SR. 88384

+2cc to Mr.R.MURUGAN,Advocate,SR.88073

+1cc to Mr.A.SHAJAHAN,Advocate,SR.88237

C.M.A. (MD) Nos.1138 of 2016
and 536 of 2017
20.11.2017

KMI

KK/CVC/SAR 3/01.03.2018/ 4P- 8C/