BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2017

CORAM:
**THE HONOURABLE MR.JUSTICE R.SUBBIAH**
**AND**
**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

C.M.A.[MD].No.863 of 2014
and
M.P.(MD)No.1 of 2014

Royal Sundaram Alliance Insurance
Company Ltd., Madurai,
Rep. by its Branch Manager : Appellant/Respondent No.2

Vs.

1.Velmurugan : Respondent/Petitioner
2.Darmalingam : Respondent/Respondent No.1

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 23.01.2013, made in M.C.O.P.No.53 of 2011 on the file of Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondent No.1 : Mr.N.Madhava Govindan
For Respondent No.2 : No Appearance

J U D G M E N T

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[Judgment of the Court was delivered by **R.SUBBIAH, J.**]

Aggrieved over the award passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Sivagangai, dated 23.01.2013, made in M.C.O.P.No.53 of 2011, the present appeal has been filed by the Insurance Company.

2. The first respondent in this appeal is the claimant before the Tribunal. The case of the first respondent before the Tribunal is that on 24.05.2009 at about 15.15 hours, while he was riding his Hero Honda motorcycle bearing Registration No.TN-63-V-8902 from Kallal to Melapoongudi, a lorry bearing Registration No.TN-22-AB-0160, owned by the second respondent herein and insured with the appellant Insurance Company, came

from the opposite direction in a rash and negligent manner and dashed against him, in which, the first respondent sustained multiple grievous injuries all over the body and due to that, his left hand above elbow was amputated. Hence, he made a claim as against the owner of the vehicle, the second respondent herein as well as the appellant Insurance Company, claiming a sum of Rs.21,00,000/- a compensation.

3. The case of the first respondent/claimant was resisted by the appellant Insurance Company before the Tribunal by filing a counter-statement stating that the accident had occurred only due to rash and negligent act of the first respondent/claimant and hence, the Insurance Company is not liable to pay compensation. That apart, the Insurance Company has also taken a defence stating that the driver of the insured vehicle did not possess valid driving licence at the time of accident and, hence, the Insurance Company is not liable to indemnify the owner of the vehicle. Thus, the Insurance Company prayed for dismissal of the Claim Petition.

4. In order to prove the claim, on the side of the first respondent/claimant, the claimant himself was examined as P.W.1, besides examining one Dr.G.Palaniappan as P.W.2 and 17 documents were marked as Exs.P.1 to P.17. On the side of the appellant Insurance Company, three witnesses were examined as R.W.1 to R.W.3 and four documents were marked as Exs.R.1 to R.4. Court documents were also marked as Exs.C.1 and C.2

5. The Tribunal, after considering the submissions made on either side and also after analyzing the entire evidence, has come to the conclusion that the accident is the result of rash and negligent driving of the driver of the insured vehicle and thereby, directed the appellant Insurance Company to pay compensation. However, the Tribunal, by taking note of the fact that the driver of the insured vehicle did not possess valid driving licence at the time of accident, ordered for pay and recovery. Aggrieved over the same, the present appeal has been filed.

6. The learned counsel for the appellant Insurance Company submitted that for the injury sustained by the first respondent/claimant in the accident that had occurred on 24.05.2009, the amount awarded by the Tribunal under different heads is on the higher side and hence, the same needs proper reduction.

7. However, the learned counsel for the first respondent submitted that the amount awarded by the Tribunal under different heads is just and reasonable and hence, there is no need to reduce the same.

8. Keeping in mind the submissions made by the learned counsel on either side, we have carefully gone through the entire materials available on record.

9. With regard to the quantum of compensation, the case of the first respondent/claimant before the Tribunal is that he was working as a Garden Worker in PKS Plantation, Puchang at Malaysia and he was earning a sum of Rs.18,000/- per month. In order to prove the income, he has also produced a Salary Certificate and the same was marked as Ex.P.14, in which, his salary was mentioned only as Rs.16,250/-. However, the Tribunal has fixed a sum of Rs.9,000/- as monthly income and by applying the multiplier '15' and by fixing the disability at 80% based on the evidence of P.W.2-Dr.G.Palaniappan, arrived at a sum of Rs.12,96,000/- as loss of income. Having regard to the nature of injury sustained by the first respondent in the accident and because of amputation of his left hand above elbow, he was not in position to carry on his normal avocation, as done earlier, the Tribunal fixed the disability at 80%, which, in our considered view, cannot be said to be excessive by any stretch of imagination. Therefore, we do not find any infirmity in the calculation made by the Tribunal to arrive at a sum of Rs.12,96,000/- as loss of income. That apart, the Tribunal has awarded only nominal compensation under the convention heads, viz., Rs.25,000/- for pain and suffering, Rs.5,000/- for attendant charges and nutrition. The amount awarded under the other heads are supported by medical bills. Thus, absolutely, we do not find any infirmity in the total sum of Rs.15,52,645/- awarded by the Tribunal towards compensation. Therefore, we are of the opinion that there are no compelling circumstances warranting this Court to make our interference in the award passed by the Tribunal.

10. In fine, this Civil Miscellaneous Appeal is dismissed, confirming the award passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Sivagangai, dated 23.01.2013, made in M.C.O.P.No.53 of 2011. The appellant / Insurance Company is directed to deposit the entire award amount, with 7.5% interest per annum from the date of petition till the date of deposit, if the amount is not deposited so far, after deducting the amount that has already been deposited by them, if any, within a period of four weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the insured vehicle, viz., the second respondent herein, as ordered by the Tribunal. On such deposit, the first respondent/claimant is permitted to withdraw the entire amount, less the amount already withdrawn, if any, with proportionate interest and costs. There will be

no order as to costs in this appeal. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar[CS II]

/True copy/



Sub Assistant Registrar

To
1.The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate), Sivagangai.

+1cc to Mr.N.Madhava Govindan,Advocate SR.6870

Judgment made in
C.M.A.[MD].No.863 of 2014

Dated: 08.02.2017

SML
KK-AAM-JM-22.02.2017-4p-3c