



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2017

CORAM

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No. 1171 of 2011

Muragaiya

... Appellant/Petitioner

Vs.

1. Kanagaraj

2. The Branch Manager,
Bajaj Alliance General Insurance Co.Ltd.,
No.12-G, Ram Nagar,
K.M.A.Complex 1st Floor,
Bye Pass Road,
Madurai.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.5 of 2008 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate) Tirunelveli, dated 08.10.2010.

For Appellant : Mr.T.Selvakumaran

For R-1 : Ex-parte

For R-2 : Mr.J.S.Murali

JUDGMENT

The claimant has filed this Civil Miscellaneous Appeal against the judgment and decree made in M.C.O.P.No.5 of 2008 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate) Tirunelveli, dated 08.10.2010.

2. The brief facts of the case are as follows:

On 08.12.2007 at about 08.30 p.m., when the injured was walking in Tirunelveli to Nagercoil Main Road, at Palayamkottai, near N.G.O.P Colony south side, a Goods vehicle bearing Registration No.TN 69 H7258 came in a rash and negligent manner and dashed against the claimant. Due to that impact, the claimant has sustained injuries all over the body. Immediately, he was taken to the Fresh Health Centre for treatment and admitted as an inpatient for more than 15 days. The accident occurred only due to the rash and negligent driving of the said goods vehicle's driver. The said vehicle belonging to the first respondent was insured with the



second respondent/Insurance Company herein and therefore, the injured filed a claim petition before the Motor Accident Claims Tribunal, (Chief Judicial Magistrate) Tirunelveli in M.C.O.P.No.5 of 2008.

3. Before the Tribunal on the side of the claimant, two witnesses viz., P.W.1 & P.W.2 were examined and nine documents viz., Ex.P.1 to Ex.P.9 were marked. Ex.P.1 is the F.I.R copy, Ex.P.2 is the MRI Scan Bill, Ex.P.3 is the MRI Scan report, Ex.P.4 is the discharge summary, Ex.P.5 are the prescriptions, Ex.P.6 is the Hospital receipts, Ex.P.7 are medical bills, Ex.P.8 is the disability certificate and Ex.P.9 is the X-Ray. On the side of the respondents, three witnesses viz., R.W.1 to R.W.3 were examined and eight documents viz., Ex.R.1 to Ex.R.8 were marked. Ex.R.1, is the Xerox copy of the driving license, Ex.R.2 is the Xerox copy of insurance policy, Ex.R.3, is the copy of notice sent by the second respondent to the first respondent and his driver. Ex.R.4. s the returned notice, which was not received by the first respondent. Ex.R.5 is the acknowledgement card, Ex.R.6 is the second respondents' petition filed under RTI Act, Ex.R.7 are the first information report, final report and statements, Ex.R.8, are the rejection letter and the returned envelop cover.

4. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments of the learned counsel appearing on either side and also appreciating the evidence on record, held that the respondents are not liable to pay any compensation to the claimant. Hence, the claim petition was dismissed.

5. Aggrieved over the same, the claimant filed a present appeal seeking compensation

6. Heard the learned counsel appearing on both sides and perused the materials available on record.

7. The learned counsel appearing for the appellant would submit that the Tribunal is not taking into account the fact that the load Auto dashed against the claimant and caused the accident and in the said accident, the appellant sustained grievous injuries. Further, the Tribunal ought to have awarded compensation on the basis of Ex.P.8 - disability certificate. Hence, he filed this present appeal seeking compensation.

8. The learned counsel appearing for the second respondent/insurance company pointed out that at the time of the accident, the first respondent's driver did not possess valid driving license. At that time an unknown lorry came in a high speed and dashed the auto and therefore, the auto hit the injured person. Therefore, the accident occurred only due to rash and negligent driving of the driver of the unknown lorry. Therefore, the first respondent's driver is not liable to pay any compensation. Hence, he prays for



dismissal of the claim petition.

9. From the perusal of the records, it seen that On 08.12.2007 at about 08.30 p.m., When the injured was pedestrian at Palayamkottai, Tirunelveli to Nagercoil Main Road near N.G.O.P Colony south side, a Goods vehicle bearing Registration No.TN 69 H7258 came in a rash and negligent manner and dash the claimant. He has sustained injuries all over the body. Immediately, he was taken to the Fresh Health Centre for treatment and he was admitted as inpatient for more than 15 days. F.I.R was registered under Sections 279 and 337 of I.P.C on the file of the PerumalPuram Police Station. Perusal of the F.I.R shows that the accident has occurred only due to the lorry and the lorry dashed against the auto and inturn the said auto dashed against the injured/claimant. Therefore, it is clear that the accident has occurred due to the lorry and also the auto and there was no mistake on the part of the injured/claimant.

10. A perusal of Ex.P.8, disability certificate would show that the claimant has sustained 15% disability. This Court is inclined to award a sum of Rs.1,500/- per percentage of disability. Accordingly, a sum of Rs.22,500/- ($15 \times 1,500 = 22,500/-$) is awarded as compensation towards disability sustained.

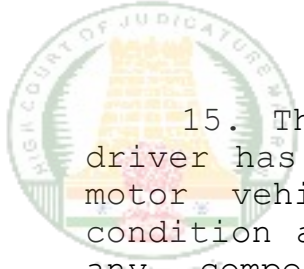
11. Similarly, Ex.P.7 medical bills, would show that the claimant incurred a sum of Rs.5689.50/- as medical expenses. This Court is inclined to award a sum of Rs.6,000/- for medical expenses.

12. Similarly, considering the facts and circumstances of the case, this Courts awards a sum of Rs.10,000/- towards 'pain and sufferings' and a sum of Rs.1,000/- towards 'transportation' and further a sum of Rs.2,500/- towards 'attendant charges'.

13. In view of the above facts and circumstances, this Court awards compensation, as under :-

S.No.	Description	Amount awarded by this Court (Rs)
1.	For Disability	22,500
2.	For medical expenses	6,000
3.	For pain and sufferings	10,000
4.	For Transportation	1,000
5.	For Attendant charges	2,500
	Total	42,000

14. Since both the Lorry and Auto drivers are responsible for the accident, their Insurers are liable to pay 50:50 compensation.



15. The contention of the Insurance Company is that the Auto driver has not possessed any valid license and he has only a light motor vehicle license, which is the violation of the policy condition and therefore, the Insurance company is not liable to pay any compensation. Eventhough, there is violation of policy condition, the auto driver was in possession of Light Motor Vehicle licence. Therefore, the Insurance company shall pay the compensation payable to the claimant at the first instance and thereafter, they are entitled to recover the same from the owner of the vehicle.

16. In view of the above, this Court directs the second respondent/Insurance company to pay 50% compensation amount to the claimant and thereafter, the Insurance company is permitted to recover the from the owner of the auto.

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the award dated 08.10.2010 made in M.C.O.P.No.5 of 2008 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Tirunelveli, is hereby set aside and this Court awards a sum of Rs.42,000/- (Rupees Forty Two Thousand Only) as compensation along with interest at the rate of 7.5% per annum from the date of petition till the date of realization and costs of the MCOP. The second respondent/ Insurance company is directed to deposit 50% of the award amount of Rs.42,000/- (Rupees Forty Two Thousand Only) with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order. Thereafter, the insurance company is permitted to recover the same from the owner of the auto. On such deposit being made, the appellant is permitted to withdraw the entire award amount with accrued interests and costs by filing formal petition before the Tribunal. No costs.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal,
Tirunelvil.
2. The Section Officer, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 88134

+ 1 CC TO Mr.T.SELVAKUMARAN, ADVOCATE IN SR No. 88404

DAS

TE/SKN-RSK/SAR-4 : 28/04/2018 : 4P/6C

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