



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2017

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1285 of 2011

Soosai

... Appellant/Claimant

Vs

Antony(Died)

1. The Branch Manager,
Bajaj Alliance Insurance Company Limited,
12G, Ram Nagar,
Bye Pass Road,
Madurai.

2. Princy

3. Minor.Rupa

4. Minor.Jebastin

5. Minor.Rubin

(Minor Respondents 3 to 5 are

Represented by their natural guardian

and Mother, second respondent)

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, challenging the award dated 25.07.2011 made in M.C.O.P.No.353 of 2007 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Tirunelveli.

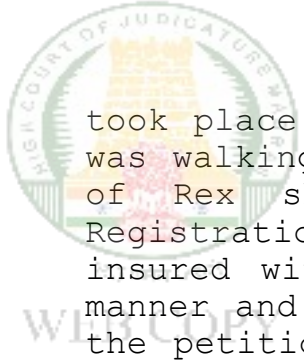
For Appellant	: Mr.T.A.Ebenezer
For Respondents	: Mr.J.S.Murali for R.1
	: No appearance
	for R.2 to R.5

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant challenging the award dated 25.07.2011 made in M.C.O.P.No.353 of 2007 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Tirunelveli.

<https://hcservices.ecourts.gov.in/hcservices/>

2. It is a case of injury which was occurred in the accident



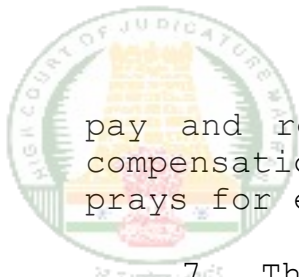
took place on 10.02.2007 at about 09.00 p.m.. When the petitioner was walking on the left side mud portion of the main road in front of Rex shop at Uvari, at that time, a motorcycle bearing Registration No.TN-72-Q-1231 belonging to the first respondent and insured with the second respondent, came in a rash and negligent manner and dashed against the petitioner. Due to the said impact, the petitioner was thrown away and sustained multiple injuries all over the body. Immediately after the accident, the petitioner was taken to Anbu vanam Hospital at Tisayanvillai and later he was referred to Government Hospital at Radhapuram and further referred to TVMC Hospital at Palayamkottai and he was undergone surgery and steel plates were implanted and he is taking treatment till date continuously. At the time of accident, the petitioner was aged about 57 years and he was earning a sum of Rs.5,000/- by fishing. Hence, he filed a claim petition in M.C.O.P.No.353 of 2007, on the file of the Motor Accident Claims Tribunal/ Principal Subordinate Judge, Tirunelveli claiming a sum of Rs.5,00,000/- as compensation.

3.Before the Tribunal, on the side of the claimant, two witnesses viz., P.W.1 and P.W.2 were examined and eight documents viz., Exs.P.1 to P.8 were marked and on the side of the second respondent, two witnesses viz., R.W.1 and R.W.2 were examined and eight documents viz., Exs.R.1 to R.8 were marked.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the offending vehicle and since the rider of the two wheeler did not possess any valid driving licence at the time of the accident, the Tribunal has directed the owner of the vehicle to pay the compensation of Rs.74,500/- as compensation to the petitioner.

5. Against which, the appellant/claimant filed the present appeal questioning the negligence as well as quantum of compensation.

6. The learned counsel appearing for the appellant/ claimant would submit that the Tribunal has wrongly fixed the liability on the owner of the vehicle by stating that at the time of accident, the rider of the vehicle did not possess valid driving licence. He would further submit that the Division Bench Judgment of this Court in **Dr.Balaji Vs. K.Sunil Kumar and The Manager, National Insurance Co., Ltd.**, reported in **2012(1) TN MAC 117 (DB)**, wherein it has held that theory of pay and recover has been introduced by the Honourable Apex Court applying the principles of social welfare legislation with intention that claimants should not suffer on account of breach of policy conditions and driving of motorcycle without valid licence being a breach of policy condition, the Court can order pay and recovery. Hence, the Tribunal ought to have pay and recover theory. Hence, the learned Counsel for the appellant would pray for ordering



pay and recover theory. He would also submit that the award of compensation granted by the Tribunal is also very meagre. Hence, he prays for enhancement of the compensation amount.

7. The learned Counsel for the first respondent Insurance Company would submit that based on the oral and documentary evidences, the Tribunal has correctly come to the conclusion and awarded just and reasonable compensation and hence, the award passed by the Tribunal deserves no interference and hence, this appeal has to be dismissed.

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

9. As per the Division Bench Judgement of this Court, as cited by the learned Counsel for the appellant, even though at the time of accident, the rider of the two wheeler did not possess valid driving licence, the Tribunal ought to have ordered pay and recovery theory, by applying the principles of social welfare legislation with intention that claimants should not suffer on account of breach of policy conditions. Hence, this Court is inclined to order pay and recover theory. Accordingly, the first respondent Insurance Company is directed to pay the compensation amount and then recovery the same from the owner of the offending vehicle.

10. As far as the quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.1,500/- for each percentage of disability, which is in the considered opinion of this Court, very meagre. Relying upon the judgment of this Court in **National Insurance Company Limited v. G.Ramesh and another** reported in **2013 (2) TN MAC 583**, this Court is inclined to grant a sum of Rs.3,000/- for 1% disability. Hence, a sum of Rs.1,05,000/- (Rs.3,000/-x35%) is awarded for 35% disability sustained by the injured claimant. The amounts granted by the Tribunal under other heads are hereby confirmed.

11. In view of the above, this Court modifies the award of the Tribunal by enhancing the compensation as under:

S.No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	For loss of income during the treatment period	6,000	6,000	confirmed
2	For transport expenses	1,000	1,000	confirmed
3	For extra nourishment	3,000	3,000	confirmed

4.	For shock and mental agony due to the accident	2,000	2,000	confirmed
5.	For pain and sufferings	10,000	10,000	confirmed
6	For permanent disability	52,500	1,05,000	enhanced
	Total	74,500	1,27,000	By enhancing a sum of Rs.52,500/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.74,500/- to Rs.1,27,000/-, dated 25.07.2011 in M.C.O.P.No.353 of 2007 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Tirunelveli. The first respondent /Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimant is permitted to withdraw the entire award amount, with accrued interests and costs without filing any formal petition before the Tribunal. No Costs. The first respondent/ Insurance Company is at liberty to recover the same from the owner of the vehicle as per the decision of the Honourable Supreme Court in **Nanjappan Vs. Oriental Insurance Company Limited and Others**, reported in **2003(1)L.W. 77**.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Tirunelveli.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.T.A.EBNEZER, ADVOCATE IN SR No. 79267
+ 1 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 79532

SSL

TE/SKN/SAR-IV : 26/10/2017 : 4P/5C

<https://hcservices.ecourts.gov.in/hcservices/>

C.M.A (MD) No.1285 of 2011
18.09.2017