

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 09.11.2017**

Date of Reserving the Judgment	Date of Pronouncing the Judgment
30.10.2017	09.11.2017

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**C.M.A. (MD)No.1538 of 2011****and****M.P(MD)No.1 of 2011**

The Branch Manager,
The United India Insurance Company Limited,
Tenkasi.

... Appellant/Respondent

Vs.

Balusamy

... Respondent/Claimant

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.07.2011 made in M.C.O.P.No.128 of 2009 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Tenkasi.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondent : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Appellant/United India Insurance Company against the Judgment and Decree made in M.A.C.O.P.No.128 of 2009, dated 13.07.2011 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Tenkasi.

2.The respondent/claimant filed a claim petition, claiming an amount of Rs.5,00,000/- towards compensation for the injuries sustained by him in a road accident.

3.It is a case of injury in the accident which took place on 22.03.2009 at about 03.30 hours. When the respondent/claimant was riding his motorcycle bearing Registration No.TN-76-D-7872 in Vallam to Ilanji main road in the Eastern side of Siluvai mukku, at that time, one drunken person crossed the road from South to North in front of the respondent/claimant's motorcycle. To avoid



him being hit, the respondent/claimant applied brake of the motor cycle and the respondent/claimant was thrown down and sustained severe injuries. Immediately, he was taken to the Government Hospital, Tenkasi and admitted as an in-patient from 22.03.2009 to 24.03.2009. At the time of accident, the respondent/claimant was aged about 41 years and he was working as a Record Clerk in the Judicial Department and was earning a sum of Rs.9,500/- per month. Hence, the respondent/claimant filed a claim petition on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Tenkasi.

4.The appellant/United India Insurance Company filed counter affidavit and stated that the respondent/claimant has to prove the age and occupation through proper documentary evidence and denied the nature of injuries sustained by the respondent/claimant and hence prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimant, two witnesses viz., P.W.1 and P.W.2 were examined and fifteen documents viz., Ex.P.1-F.I.R, Ex.P.2-report of the accident register, Ex.P.3-Motor Vehicle Inspector's report, Ex.P.4-charge-sheet, Ex.P.5-receipt of the discharge summary, Ex.P.6-Doctor's recommendation chit, Ex.P.7-bill for a sum of Rs.237/-, Ex.P.8-bill for a sum of Rs.202/-, Ex.P.9-R.C Book, Ex.P.10-xerox copy of the policy, Ex.P.11-driving licence, Ex.P.12-certificate of the claimant's medical leave, Ex.P.13-salary certificate, Ex.P.14-disability certificate and Ex.P.15-x-ray to P.15 were marked and on the side of the respondent, one witness viz., R.W.1 was examined and one document viz., Ex.R.1-xerox copy of the policy was marked.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the learned counsel appearing on either side and also appreciating the evidence on record awarded a sum of Rs.56,000/- as compensation.

7.Against the award of compensation, the appellant/United India Insurance Company has filed the present appeal.

8.Heard the learned counsel appearing for the appellant/United India Insurance Company and perused the materials available on record.

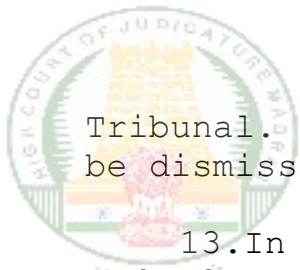
9.The learned counsel appearing for the appellant/United India Insurance Company submitted that the Tribunal ought to have dismissed the claim petition as not maintainable and the Tribunal failed to consider that the liability of the insurer personal accident claim is limited to certain types of injuries and death



10. From the perusal of the records, it is seen that the teeth of the respondent/claimant was broken and some teeth are missing and got shacked and lost its strength and the respondent/claimant sustained very severe injuries and sustained mandible fracture and speech has become incoherent. Due to the injury in the jaw, he was not able to eat and chew the food and he has taken treatment at Tenkasi and surgery was done for recliping. From the evidence of P.W.1 it is seen that his bike and other properties such as phone and watch were also damaged. From Ex.P.4-charge sheet, it is seen that a case has been registered against the claimant in Crime No.117 of 2009 under Sections 279 and 337 I.P.C and the same is pending on the file of the Judicial Magistrate, Shencottah. Further, the Tribunal has assessed the disability at 20% and fixed a sum of Rs.2,000/- per percentage and awarded a sum of Rs.40,000/- towards disability, which in the considered opinion of this Court, is reasonable. Further, the Tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings, a sum of Rs.5,000/- towards nourishment, a sum of Rs.500/- towards medical expenses and a sum of Rs.500/- towards damages to the vehicle. In total, the Tribunal has awarded a sum of Rs.56,000/- as compensation to the respondent/claimant.

11. Further it is seen from the records that the respondent/claimant insured Hero Honda bike under Policy No.091002/31/08/01/00005464 with the appellant and the respondent/claimant paid a sum of Rs.996/- for premium under two heads viz., Rs.536.40/- for vehicle own damages and Rs.300.00/- for third party claim and Rs.50/- paid for coverage for Rs.1,00,000/- of the owner cum driver through personal accident coverage. The Tribunal has also considered the decision of the Honourable Supreme Court in ***Oriental Insurance Company Limited Vs. Rajini Devi and others*** reported in ***2008 (2) TNMAC 336***, in which it is stated that the "Tribunal therefore, not correct in taking view that while determining amount of compensation only factor relevant would be merely use of Motor Vehicle - for purpose of claim of compensation by heirs of owner of vehicle, terms of contract of Insurance alone could be taken recourse to" and stated that as per the policy Act, though the claim was of Rs.5,00,000/-, minimum sum of Rs.1,00,000/- can be assessed and found that the appellant/United India Insurance Company is liable to pay the compensation and this Court also directs the appellant/United India Insurance Company to pay the award amount to the respondent/claimant awarded by the Tribunal, which in the considered opinion of this Court, is reasonable and the same is confirmed.

12. In view of the above, this Court is of the considered opinion that there is no error in the finding of the Tribunal and the Tribunal has awarded just and reasonable compensation. Hence, there is no infirmity or irregularity in the award passed by the



Tribunal. Therefore, this Civil Miscellaneous Appeal deserves to be dismissed.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the Judgment and Decree made in M.A.C.O.P.No.128 of 2009, dated 13.07.2011 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Tenkasi, is hereby confirmed. The appellant/United India 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 appellant/claimant is permitted to withdraw the entire award amount, with accrued interests and costs without filing any formal petition before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Motor Accident Claims Tribunal
Tenkasi.

Copy to

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G.Prabhu Rajadurai, Advocate Sr.No.86349

PS

VB/KK/SAR1/28/11/2017/4P/4C

**Judgment in
C.M.A. (MD) No.1538 of 2011
09.11.2017**