

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1498 of 2017
and CMP.No.8019 of 2017

The Branch Manager
The Oriental Insurance Company Limited
Branch Office
Dharmapuri

..Appellant/2nd Respondent

Versus

1.K.Shivakumar

..Respondent No.1/Petitioner

2.A.P.Pacha Saheb

..Respondent No.2/Respondent No.1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.06.2015 made in M.A.C.T.O.P.No.335 of 2013 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, at Hosur.

For Appellant

: Mr.M.Krishnamoorthy

For respondents

: M/s.Mukund R.Panidan for R1.
R2-Exparte.

J U D G M E N T

The 2nd respondent/Insurance Company as appellant has filed this appeal against the judgment and decree dated 04.06.2015 made in

M.A.C.T.O.P.No.335 of 2013 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, at Hosur.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The Petitioner states that on 07.09.2011 at about 7.15 a.m., while he was riding his motor cycle from Periyakuttai Village to his house at normal speed, observing traffic rules and as he approached Raman Dorvi Villge to Theertham Road, a tempo traveller bearing Reg.No.KA..982 belonging to the 1st respondent, insured with the 2nd respondent came at high speed, driven in a rash and negligent manner from the opposite side and dashed against the two wheeler which the Petitioner was riding. Consequently, the Petitioner suffered multiple injuries all over his body and he underwent surgical treatment incurring lot of expenses. At the time of the accident, he was studying 12th standard and was aged 20 years. Further it is stated that the Petitioner was assisting his father in the milk vending business and was earning Rs.8000/- from the same. Due to injury suffered in the accident, the petitioner is unable to attend to his normal work and he suffered partial permanent disability. The accident occurred only due to the negligence of the 1st respondent vehicle driver. Thus, the petitioner sought for a sum of Rs.16,00,000/- as compensation from the respondents, viz., the owner and insurer of the 1st respondent vehicle.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent-Insurance company contends that the accident did not occur in the manner alleged by the Petitioner. While the Tempo van was proceeding in Theertham to Berikai Road towards Berikai, on 07.09.2011, at normal speed, while going near Ramandhoddi Village on Theertham to Berikai Road, the Petitioner came in a two wheeler bearing Reg.No.TN-70-B-7329 in the opposite direction in a rash and negligent manner and attempted to overtake another vehicle and in the process, the Petitioner dashed against the 1st respondent tempo van resulting in the accident. The careless driving of the Petitioner alone caused the accident. The owner and insurer of the two wheeler driven by the Petitioner are necessary parties. As the negligence of the Petitioner alone is the cause for the accident, the 2nd respondent is not liable to pay any compensation. The driver of the tempo did not possess valid driving licence and the same amounts to violation of policy condition. The 2nd respondent-Insurance company is not liable to pay any compensation. Thus the 2nd respondent sought to dismiss the petition.

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4. Before the Tribunal, the Petitioner examined himself as P.W.1 and medical expert as P.W.2, produced documents Ex.P.1 to Ex.P.10 to prove his claim. On the other hand, the 2nd respondent examined R.W.1 to R.W.3 and produced exhibits Ex.R.1 to Ex.R.7 to disprove the claim of the Petitioner.

The Tribunal, on the basis of available evidence on record found that the negligence of the 1st respondent temp van driver alone caused the accident and passed award for a sum of Rs.10,82,200/- payable by the respondents to the petitioners. Aggrieved over the said finding of the Tribunal, the 2nd respondent-Insurance company has come forward with the present appeal.

5. The Appeal is purely quantum appeal only. The learned counsel for the 2nd respondent-insurer contends that the Tribunal wrongly assessed the disability of the victim at 55% as fixed by P.W.2 doctor without considering all the available materials. The Petitioner having not suffered any functional disability, the Tribunal wrongly applied multiplier system to award compensation. The amount provided for medical expenses is highly exorbitant. The amount provided under different heads is also unwarranted. Thus, the 2nd respondent-Insurance company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

6. Per contra, the learned counsel for the Petitioner/claimant/first respondent herein submits that the driver of the 1st respondent vehicle himself admitted his guilt and the Tribunal correctly fixed the negligence on the part of the 1st respondent driver and passed award of just and fair compensation to the Petitioner/claimant. As such, there is no need to interfere with the conclusion arrived at by the Tribunal. The contention of the

2nd respondent-Insurance company is unwarranted and unfounded. Thus, the Petitioner/claimant seeks for dismissal of the appeal.

7. Both sides have not contested the conclusion of the Tribunal regarding the negligence aspect. Only quantum of the award is questioned by the 2nd respondent-insurer who is the appellant herein. Before the Tribunal, the injured petitioner deposed as P.W.1 and stated that on 07.09.2011 at about 7.15 a.m., while he was proceeding in his two wheeler from Periyakuthi village to Theertham Road, while going near Ramandhoodi Village, a TATA 407 Tempo bearing Reg.No.KA-01-B-982 belonging to the 1st respondent came at high speed in the opposite direction and dashed against him. The Police registered Ex.P.1-FIR against the driver of the 1st respondent tempo van only. Thus, the Petitioner contended that the rash and negligent driving of the 1st respondent van driver only caused the accident. On the other hand, the driver of the 1st respondent vehicle who deposed as R.W.2 admitted that the Police filed final report against him and in the case before the criminal court he pleaded guilt and paid fine amount. Thus, there is a clear cut admission of R.W.2 that the accident occurred only due to his negligence and he has submitted the same before the criminal court and he was convicted for the same. As such, the finding of the Tribunal that the 1st respondent van driver alone caused the accident is perfectly in order and the same needs no interference.

8. The Petitioner who deposed as P.W.1 stated that on 07.09.2011 at about 7.15 a.m., the accident occurred as stated above in which he suffered the following injuries:-

- "i) fracture to right femur
- (ii) type ii open fracture of left tibia
- (iii) fracture of distal radius of right and multiple abrasions over face
- (iv) injuries to head and other parts of the body."

The Petitioner is stated to have taken first aid in Government Hospital, Hosur and then as inpatient at St.Johns Hospital, Bangalore from 07.09.2011 to 21.09.2011. The Petitioner stated that he suffered fracture in his right forehead as well as in his left leg and even after surgery, he is finding difficulty in walking long distance, climbing staircase and lifting heavy object with his right hand. He thus states his normal day to day activity is affected. The Petitioner examined the medical expert as P.W.2 and he stated in his evidence that the Petitioner suffered fracture in his left leg and also right forearm which required surgical treatment and even after the same, he is finding difficulty in walking long distance and climbing staircase. P.W.2 stated that the Petitioner will not be in a position to do agriculture work or any other hard labour as he used to do. The Tribunal on the basis of P.W.2 doctor evidence, fixed the whole body disability suffered by the Petitioner at 55%. The contention of the counsel for the Petitioner/injured is that the 2nd

respondent-Insurance company while disputing the assessment of disability percentage has not let in any oral or documentary evidence to disprove the version of P.W.2 doctor. When there is no contradictory evidence available to P.W.2 evidence, the conclusion of the Tribunal in fixing the disability suffered by the Petitioner at 55% is perfectly correct. It is further contended that the appellant/2nd respondent-insurer has not produced any material in support of their contention that the Tribunal ought to have fixed the disability at much lower level and also no material is forth coming to discredit P.W.2 doctor evidence. As such, on the basis of P.W.1 and P.W.2 evidence, the level of disability suffered by the Petitioner is correctly fixed at 55%.

9. The Tribunal considering the nature of injury suffered by the Petitioner has concluded that the Petitioner is not in a position to carry on his normal work and milk vending business, which resulted in loss of earning to the Petitioner and therefore applied multiplier method to assess the loss of income of the Petitioner. Disputing the same, the learned counsel for the 2nd respondent-Insurance company contended that unless and until the injury suffered by the Petitioner results in functional disability, there is no need to apply multiplier method to assess the future loss of income. The Petitioner stated that he was studying 12th standard and is aged 20 years. If that be so, then the Petitioner could not have done his milk vending business as stated by him. In such circumstances, the claim of the Petitioner that he was

earning Rs.8000/- per month cannot be true. As such, the Tribunal fixed the notional income of the Petitioner at Rs.6500/- per month and the same is in order. P.W.2 deposed and detailed about the nature of injury suffered and also the fractures sustained which affected his normal functioning. However, there is no sufficient material on record to show that that Petitioner suffered any functional disability. Further there is nothing on record to show that P.W.2 gave treatment to the Petitioner. P.W.2 has not attached any calculation sheet with the disability certificate - Ex.P.8 issued by him. There is no other evidence to prove that the Petitioner suffered functional disability. In such circumstances, in the absence of any acceptable evidence that the Petitioner suffered functional disability resulting in loss of income to him, this court is of the view that it is not proper to apply multiplier method. As such, the Petitioner can be compensated at the rate of Rs.3000/- per percentage of disability suffered by him. Therefore, the multiplier method adopted by the Tribunal to assess the loss of earning is set aside. The calculation for the compensation towards disability is as follows:-

$55\% \times \text{Rs.}3000/- = \text{Rs.}1,65,000/-$.

Considering the nature of injury suffered by the Petitioner, the petitioner will be having some physical discomfort. As such, it would be appropriate to award Rs.50,000/- for loss of amenities. Likewise, considering the nature of injury and the nature of treatment undergone by him, it would be appropriate

to award the Petitioner a sum of Rs.25,000/- towards Pain and suffering, instead of Rs.75,000/- granted by the Tribunal. There is nothing on record to show that the Petitioner's matrimonial life is affected due to the injury suffered by him. As such, the award passed by the Tribunal providing Rs.50,000/- for the same is unsustainable and the same is set aside. The Tribunal awarded Rs.1,52,000/- towards medical expenses on the basis of Ex.P.6 and Ex.P10 medical bills. Likewise the amount provided under other heads is also normal and the same are confirmed.

10. In view of the foregoing discussion, the modified award amount is as follows:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Disability	7,72,000/-	1,65,000/-
2.	Loss of amenities	---	50,000/-
3.	Pain and suffering	75,000/-	25,000/-
	Medical expenses	1,52,000	1,52,000/-
5.	Extra nourishment	10,000/-	10,000/-
6.	Transport expenses	5,000/-	5,000/-
7.	Attender charges	18,000/-	18,000/-
8.	Loss of matrimonial life	50,000/-	---
	Total	10,82,200/-	4,25,000/-.

11. In the result,

- (i) This Civil Miscellaneous Appeal is Partly Allowed;
- (ii) The award amount is reduced from Rs.10,82,200/- to Rs.4,25,000/-.
- (iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;
- (iv) The Appellant/Insurance company was directed by this court by order dated 02.06.2017 to deposit Rupees Eight lakhs. Therefore, after satisfying the order of the award of this court, the appellant/Insurance company is at liberty to withdraw the excess sum, if any, in deposit.
- (v) The Petitioner/Respondent No.1 is entitled to withdraw the award amount along with accrued interest. The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount.
- (vi) No costs. Consequently connected CMP is closed.

06.06.2018

Index:Yes/No

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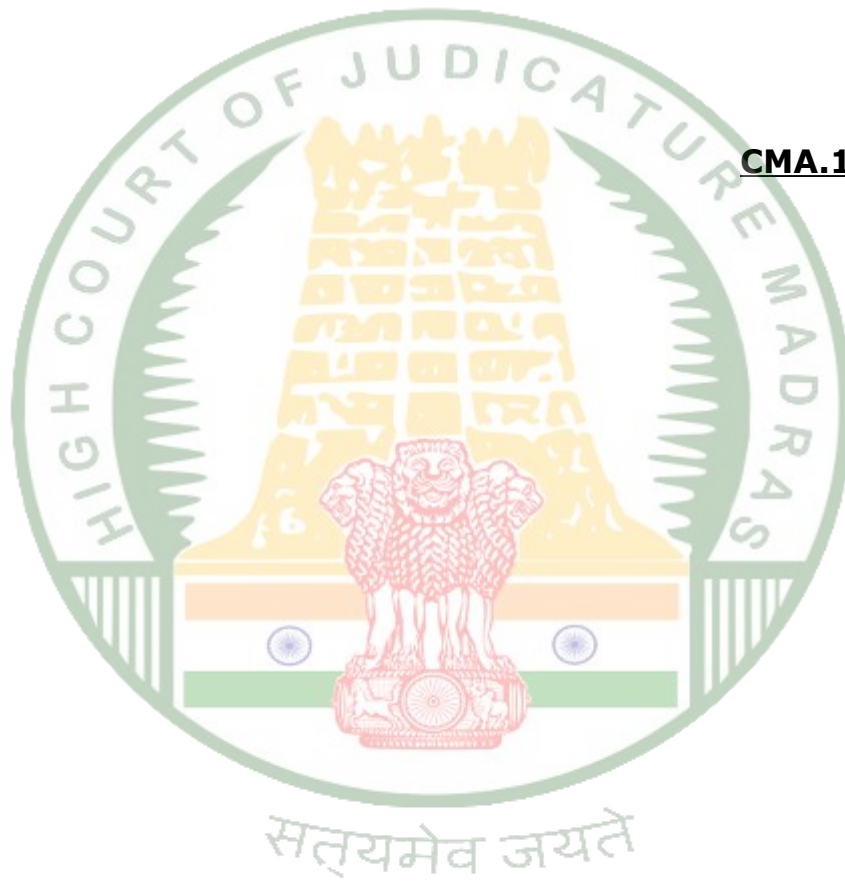
To

The Motor Accident Claims Tribunal, Subordinate Judge, at Hosur.

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S.BASKARAN, J.

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