

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 01.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.3499 of 2012 &
Miscellaneous Petition No. 1 of 2012

M/s. The Oriental Insurance company Limited
No.547, Gandhi Road
Kancheepuram ...Appellant/2nd respondent

Vs

1.D. Sekar ...1st Respondent/Petitioner

2.E. Ramajayam
(R2 Set exparte before the
Court below) ...2nd Respondent/1st respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 10.06.2011 made in MCOP No.158 of 2008 by the Motor Accidents Claims Tribunal / Additional Subordinate Judge, Chengalpattu.

For Appellant : Ms. Kumari
For Respondents : R1 - Mr.C. Prabhakaran
R2 - Exparte

J U D G M E N T

Aggrieved over the award passed by the Motor Accident Claims Tribunal in MCOP No.158 of 2008 on the file of Additional Subordinate Judge, Chengalpat, the appellant herein who is the 2nd respondent in the Claim petition filed this appeal, seeking the relief to set aside the award passed by the Claims Tribunal. In the Claims Tribunal, the 1st respondent in this appeal filed claim petition under Section 166 of Motor Vehicle Act, in which he claimed the compensation of Rs.2,00,000/- for the injury sustained by him in a road accident that occurred on 25.03.2008.

After elaborate enquiry, the Claims Tribunal awarded Rs.1,99,650/- as total compensation with interest at the rate of 7.5% per annum against which, the present appeal has been preferred. For the sake of convenience, hereinafter the parties are referred as per their litigative status in the Claims Tribunal.

2) In the Claims Tribunal, the case of the Claimant is as follows.

2.1. On 25.03.2008, at about 8.45pm, when the Claimant was riding the Hero Honda Motorcycle bearing Reg.No. TN 25 B 6904 in a moderate speed, near the Mosque in Booma Chetty Kulam, Vandavasi Taluk, a Tata Sumo vehicle bearing Reg.No. TN 02 J 9600, driven by its driver in a rash and negligent manner at a high speed and hit against the Motorcycle. Due to the accident, the rider and the pillion rider of the Motor Cycle were sustained grievous injuries and immediately they were taken to the Government Hospital at Vandavasi and from there referred to Government Hospital at Chengalpattu. For the said accident, a case has been registered by the Vanthavasi South Police Station in Cr.No.173 of 2008 under Section 279 and 337 of IPC. According to the claimant, the owner of the Tata sumo vehicle, who is the 1st respondent in the claim application and the insurer, who is the 2nd respondent in the claim application were jointly and severally liable to pay the compensation. Before the Tribunal, the owner of the offending vehicle, who is the 1st respondent remained exparte.

3) Opposing the claim made by the claimant, the 2nd respondent / Insurance Company filed a Counter affidavit stating that the accident occurred only due to the negligent act of the claimant. He only driven the Motorcycle in a negligent manner and caused the accident. Thereby, the Insurance company is not liable to pay the compensation. The age, income and avocation of the claimant are disputed. The Tribunal after considering the evidence, let in by the claimant's side, awarded a compensation of Rs.1,99,650/- and held that the 1st and 2nd respondents are jointly and severally liable to pay the award amount.

4) Being not satisfied with the quantum of award, the appellant insurance company have come forward with the present appeal. The learned counsel appearing for the appellant / Insurance Company contended that the Tribunal failed to consider the evidence on record properly and accepted all the documents produced by the claimant and fixed Rs.1,99,650/- as a total compensation, which is erroneous. The amount awarded by the Claims Tribunal under the various heads are excessive. Hence, the appellant sought for setting aside the award passed by the Claims Tribunal.

5) Per contra, the learned Counsel appearing for the claimant / 1st respondent contended that the Tribunal, after appreciating the evidence let in by the claimant perspectively and awarded the above compensation. According to him, the award passed by the Claims Tribunal does not need any interference.

6) In the Claims Tribunal, the claimant was examined as PW 1. According to him, at the time of accident, the Tatasumo vehicle owned by the 2nd respondent / 1st respondent came in a rash and negligent manner and hit against them. In order to substantiate the above evidence, he produced the copy of the First Information Report as Ex.P.1. The contents of the First Information Report will clearly proves that the evidence given by PW 1 is true and genuine. On the other hand, in order to dispute the evidence given by PW 1, none have been examined on the side of the respondent. So, it is presumed that the evidence given by PW 1 was accepted on the side of the Insurance company. Therefore, the findings arrived at by the Claims Tribunal that due to the rash and negligent act of the driver of the Tata Sumo vehicle is the reason for the accident is affirmed by this Court.

7) Coming to the quantum of compensation, PW 1 has stated that in the accident, he sustained fracture in the left shoulder and right leg. Further, he sustained injury on his jaws and on his right leg, thumb finger. Further, he has been treated in the Chengalpat Government Hospital from 25.03.2008 to 29.03.2008. In order to prove the said evidence, he produced Drug Cards issued at CMC Hospital, Chengalpattu. Further, CT Scan dated 26.03.2008 and the Wound Certificate issued by the Government Hospital, Vandavasi dated 08.04.2008 were marked as Ex.P.4 and Ex.P.5 respectively.

8) Further, in the claims Tribunal, in order to prove the disability, Dr. S. Kannan was examined as PW 3. Further, the Disability Certificate issued by him was marked as Ex.P.10 and X-ray, which has been taken for calculating the disability was marked as Ex.P.11. In his evidence, the doctor has stated that the claimant sustained 40% of permanent partial disability, for which the claims Tribunal after adopting the multiplier method calculated the compensation and awarded Rs. 1,44,000/- under the head of disability. In fact, the disability was calculated after 3 years from the date of accident. Further, the Doctor did not say anything about the functional disability of the claimant. Even though, the claimant was working in AR Enterprises, that alone is not sufficient for calculating the compensation under the multiplier method. In this regard, in the claims tribunal, the Additional Subordinate Judge , without

mentioning any reason for adopting the multiplier method, calculated the above compensation, which is purely erroneous one. So, this Court holds Rs.1,00,000/- is an appropriate amount for the disability sustained by the claimant.

9) In the Claims Tribunal, under the head of Transportation Rs.10,000/- was awarded, and the same is unaltered. For the extra nourishment, this Court awarded Rs.10,000/- instead of Rs.5,000/- awarded by the claims Tribunal. This Court awarded Rs.10,000/- for loss of amenities. In otherwise, Rs.5,000/- was awarded under the head of damage to clothing was confirmed. Moreover, the Claims Tribunal awarded Rs.35,000/- under the head of pain and sufferings. Since, the claimant sustained 2 fractures and because of the reason, he underwent surgery, this Court confirms the said amount under the head of pain and sufferings. Apart from that, this Court awards Rs.5,000/- under the head of attender's charges and Rs.5,000/- was awarded under the head of future medical expenses.

SL.NO	PARTICULARS	AMOUNT (IN.RS)
1.	Towards Pain and sufferings	35,000.00
2.	Towards Transportation charges	10,000.00
3.	Towards Permanent partial disability	1,00,000.00
4.	Towards loss of amenities	10,000.00
5.	Towards Extra nourishment	10,000.00
6.	Towards Damage to clothing	5,000.00
7.	Towards Attender's Charges	5,000.00
8.	Towards Future medical expenses	5,000.00
Total		1,80,000.00

10) In the result, the Civil Miscellaneous appeal is partly allowed and the award amount is reduced to Rs.1,80,000/-. The 1st respondent in this appeal is entitled to the compensation of Rs.1,80,000/- with 7.5% interest per annum from the date of petition till the date of realisation. The appellant is directed to deposit the award amount along with the accrued interest and cost within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the 1st respondent in this CMA is permitted to

withdraw the same, by filing necessary application before the Tribunal. No costs. The connected miscellaneous petition is disposed of.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

vrn

To

The Motor Accidents Claims Tribunal/
Additional Subordinate Judge, Chengalpattu.

Copy to

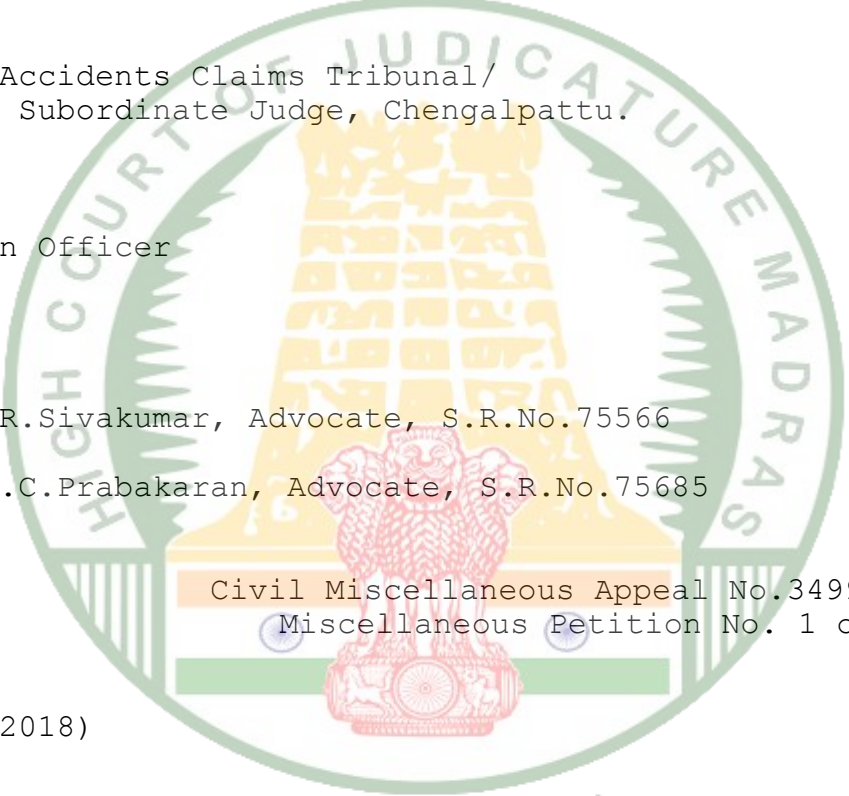
The Section Officer
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High Court
Madras

+1cc to MrR.Sivakumar, Advocate, S.R.No.75566

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.75685

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PA(CO)
GSP(07/12/2018)



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