

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 21.08.2018

JUDGMENT PRONOUNCED ON : 11.09.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A.No.666 of 2011
and M.P.No.1 of 2011 and M.P.No.1 of 2013

The Branch Manager,
The New India Assurance Company Ltd.,
Branch Office,
No.39-C, Bye-pass Road,
Dharmapuri Town and District. ... Appellant/ 2nd Respondent

versus

1.K.Saravanan
2.T.Govindan ... Respondents/ Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 07.12.2010 passed in M.C.O.P.No.137 of 2008 on the file of the Motor Accidents Claims Tribunal [Additional District Court], Krishnagiri.

For Appellant : Mr.R.Sivakumar

For Respondent No.1 : Mr.M.Sriram

J U D G M E N T
सत्यमेव जयते

This Civil Miscellaneous Appeal is filed by the appellant [Insurance Company], challenging the judgment and decree dated 07.12.2010 passed in M.C.O.P.No.137 of 2008 on the file of the Motor Accidents Claims Tribunal [Additional District Court], Krishnagiri.

2. For the sake of convenience, the parties are referred to herein, as per their litigative status before the Tribunal. It is a case of injury. The case of the petitioner [claimant] is that on 01.01.2007, at about 18.30

hours, the Tractor bearing Registration No.TN-24-B-4280 fitted with ploughshare [kalappail] belonging to the first respondent [owner] and insured with the second respondent [Insurance Company] was ploughing in the petitioner's field. During such time, the petitioner sat on the Tractor and watched the ploughing. At that time, the driver of the said Tractor, drove the same in a pit with great speed without any due care and that, the petitioner fell down, the ploughshare was hit on his left eye. On account of the same, the petitioner sustained grievous injuries. According to the petitioner, the accident had occurred only due to the rash and negligent act of the driver of the said Tractor. Thereafter, a case has been registered in Crime No.3 of 2007 for the offences under Sections 279 and 337 of IPC by the Kaveripattinam Police.

3. After the accident, the petitioner was taken to the Government Hospital, Krishnagiri and thereafter, he was referred to Aravind Eye Hospital, Madurai and admitted him as an inpatient. Finally, the petitioner lost his left eye sight totally and unable to see anything through his left eye. At the time of accident, the petitioner was aged about 33 years and earning Rs.7,000/- per month by working as Mason as well as in the agricultural field. He has stated that due to the injuries suffered by him, he is not able to attend his work and hence, sought a sum of Rs.5,00,000/- as compensation from the respondents, who are the owner and insurer of the said Tractor.

4. On the other hand, opposing the claim of the petitioner, by filing counter, the second respondent [Insurance Company] denied all the allegations stated in the petition. He specifically stated that the driver of the Tractor did not possess any valid and effective driving licence at the relevant time of accident. Moreover, the petitioner had sat on the ploughshare of the Tractor, while the Tractor was ploughing. As per the conditions stipulated in the Insurance Policy, no person other than the driver of the Tractor is allowed to travel on the Tractor. Accordingly, the petitioner had violated the policy conditions. Thus, the second respondent sought for dismissal of the claim petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1. Further, the Doctor, who issued disability certificate to the claimant was examined as

P.W.2. The claimant produced 9 documents as Ex.P.1 to Ex.P.9 to prove his claim. On the side of the respondents, the Junior Assistant of the Regional Transport Office and the Executive Officer of New India Insurance Company were examined as R.W.1 and R.W.2 respectively. Further, the copy of the Insurance Policy was marked as Ex.R.1. The first respondent remained exparte.

6. The Tribunal, on the basis of the available records, found that the first respondent Tractor driver alone caused the accident and accordingly, passed award for a sum of Rs.1,70,500/- as compensation to the injured [petitioner, Saravanan] directed the second respondent to pay the compensation. Aggrieved over the said finding, the second respondent [Insurance Company] has come forward with the present Appeal.

7. When the appeal is taken up for hearing, I have heard the arguments of Mr.R.Sivakumar, learned counsel appearing for the appellant, Mr.M.Sriram, learned counsel appearing for the first respondent and also perused the records carefully.

8. The learned counsel appearing for the second respondent [Insurance Company] contends that the driver, who drove the Tractor at the time of accident is not having the valid licence for driving the Tractor. Further, he submits that since the driver of the vehicle permitted the petitioner [claimant] for travelling in the Tractor is against the conditions stipulated in the policy, thereby, directing the Insurance Company to pay the compensation is legally unsustainable. Hence, the second respondent [Insurance Company] sought for setting aside the award passed by the Tribunal, by entertaining the appeal.

9. Per contra, the learned counsel appearing for the petitioner [injured] contended that the Tribunal correctly appreciated the evidence of P.W.1 and on perusal of other exhibits rightly came to the conclusion that the accident happened due to the negligence of the first respondent Tractor driver. Further, the award quantified by the Tribunal is just and fair. According to him, no interference is required. Thus, the petitioner sought for dismissal of the appeal.

10. In the Claims Tribunal, the copy of the policy issued to the Tractor was exhibited as R.1. As per the policy conditions, any person including the insured holding effective driving licence is a competent person to drive the Tractor. In the case in our hand, in the Claims Tribunal, the Junior Assistant of the Regional Transport Office was examined as R.W.1, he had stated that the licence issued in favour of the driver, who drove the Tractor at the time of accident under Ex.P.5 is not authorised for driving the Tractor. Accordingly, the owner of the Tractor violated the policy conditions in two ways:

[i] against the conditions of the Insurance Policy, the petitioner was travelled in the Tractor at the time of accident, and

[ii] the driver of the Tractor, who drove the Tractor at the time of accident is not having any valid and effective licence.

11. Moreover, in the Claims Tribunal itself, the second respondent [Insurance Company] raising the plea that the owner of the Tractor violated the policy conditions. In the said circumstances, since the policy conditions are violated, the Insurance Company is not having any liability to pay the compensation. Further, in order to support his contentions, the learned counsel appearing for the second respondent [Insurance Company] relied on the following judgments:

i. DIVISIONAL MANAGER, NEW INDIA ASSURANCE CO. LTD., vs. VINAYAGA MOORTHY reported in 2010 ACJ 1605

ii. NEW INDIA ASSURANCE CO. LTD., vs. MIRABAI reported in 2013 ACJ 2604

iii. BRANCH MANAGER, UNITED INDIA INSURANCE CO. LTD., vs. NAGAMMAL reported in 2009 ACJ 865

12. However, in the judgment of this Court in UNITED INDIA INSURANCE CO. LTD., vs. AYYAMALAI reported in 2013 ACJ 2353, took a different view, wherein it has observed as follows:

"8. The Motor Vehicles Act particularly the provisions relating to compensation

for the victims of road accidents and the requirement of compulsory insurance coverage are meant for the benefit of the victims and the members of their family, therefore, such provisions are to be liberally construed [see Divisional Manager, Oriental Insurance Co. Ltd. v. Jasoda Mohanta, 1997 ACJ 284 (Orissa)]."

13. Further, in the judgment of The High Court of Himachal Pradesh in NATIONAL INSURANCE CO. LTD., vs. REENA DEVI reported in 2013 ACJ 1046, wherein, it was held that since the deceased a poor labourer has died leaving behind his widow and other dependants, directed the Insurance Company to satisfy the award and then recover the amount from the insured.

14. The Honourable Apex Court also took the same view in the case of ORIENTAL INSURANCE CO. LTD., vs. BRIJ MOHAN reported in 2007 ACJ 1909.

15. Now, applying the said principle, with the case in our hand, it is an admitted fact that the injured is a poor agricultural coolie. Now-a-days, all are aware about the pitiable conditions of agriculturist coolie. So, this Court decided that this is the fittest case for directing the second respondent [Insurance Company] to pay the compensation amount fixed by the Claims Tribunal and permitted to recover the same from the owner of the Tractor.

16. Coming to the point of quantum, the Claims Tribunal has awarded total compensation of Rs.1,70,500/- under the following heads:

Head	Amount (Rs.)
For loss of vision in left eye	50,000.00
For partial and permanent disability	70,000.00
Pain and Sufferings	20,000.00
Medical bills	14,500.00
Transportation charges	10,000.00
Extra-nourishment	6,000.00
Total	1,70,500.00

17. It is an admitted fact that in the accident alleged in the claim petition, the claimant losses the vision in one eye. Further, he submitted the medical bills for Rs.14,500/-. Even after knowing the loss of vision, awarding Rs.1,70,500/- as a compensation is nothing but very meager one. In the said circumstances, reliance is placed in the judgment of LIYAKAT @ LIYAKAT ALI vs. PAPPU @ SOHRAB AND OTHERS reported in 2014 SCC ONLINE P&H 8407, in which, it was held as follows;

"A total loss of vision of an eye is a schedule injury under the Workmen Compensation Act, which law estimated as resulting in 30% loss of earning capacity. It must be remembered that loss of vision causes not merely a loss of amenity but impairs the earning capacity and marketability of a person in competing for employment or earning his living. I will take 30% disability assessed as resulting in 30% loss of earning capacity and apply a multiplier of 13 on the income that shall be taken as Rs. 4,000/-....."

18. Accordingly, I am of the opinion that it is the fittest case for adopting the multiplier method for calculating the compensation. I will re-work the compensation under various heads and tabulate as under:-

	Heads of claim	Tribunal	High Court
Sr. No.		Amount (Rs.)	Amount (Rs.)
1	Loss of Income from to		8,000.00
2	Medical Expenses		
(i)	Medicines	14,500.00	14,500.00
(ii)	Hospital charges		
(iii)	Attendant charges		1,000.00
(iv)	Special Diet	6,000.00	1,000.00
(v)	Transportation	10,000.00	1,000.00
3	Pain and sufferings	20,000.00	30,000.00
4	Disability	30%	30%

	Heads of claim	Tribunal	High Court
5	Loss of earning capacity		30%
(i)	Income		4,000.00
(ii)	Multiplier		13
(iii)	30% of loss of earning capacity		1,87,200
6	Loss of amenities	1,20,000.00	30,000
7	Reduction of life expectancy		
8	Loss of prospect of marriage		
	Total	1,70,500.00	2,76,700.00

The total compensation payable shall be Rs.2,76,700/-.

19. Now applying the said principle with the facts of the case in our hand, it is to be noted that the claimant was aged about only 33 years at the time of accident. Further, as result of accident, his left eye was removed and he lost the vision. Even though the Doctor, who issued a disability certificate is not an Ophthalmologist, for telling about the removal of eye, special qualification is not necessary. So, the evidence given by the P.W.2 is accepted and accordingly, in the Claims Tribunal, it was proved that the claimant has lost his single eye. So, the facts of the case in our hand is squarely applicable to the case as already discussed above. So, for calculating the compensation applying the multiplier method is necessary, thereby, this Court followed the same dictum adopted by the Punjab and Haryana High Court and awarded Rs.2,60,400/- as a total compensation along with interest @ 7.5% from the date of the petition till the date of payment.

20. Since the policy conditions are violated by the owner of the Tractor, following the principles laid down by our Honourable Apex Court as already discussed, this Court also took the same view and directs the second respondent [Insurance Company] to deposit the entire award amount along with interest.

21. In the result,

[i] The Civil Miscellaneous Appeal is disposed of;

[ii] The award amount is enhanced to Rs.2,76,700/- from Rs.1,70,500/-. The petitioner in M.C.O.P.No.137 of 2008 is entitled to award amount of Rs.2,76,700/- [Rupees Two Lakhs Seventy Six Thousand Seven Hundred only] with 7.5% interest per annum from the date of petition till the date of realisation. Though the Insurance Company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.1,70,500/- is enhanced to Rs.2,76,700/- invoking Order 41 Rule 33 of CPC and Section 151 and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

[iii] The appellant [Insurance Company] is directed to deposit the award amount along with accrued interest and cost with a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the first respondent [petitioner, K.Saravanan] in this appeal is permitted to withdraw the same, by filing necessary application before the Tribunal. Further, the liberty is given to the Appellant / Insurance Company to recover the entire compensation amount from the owner of the vehicle without filing any formal application. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

sri

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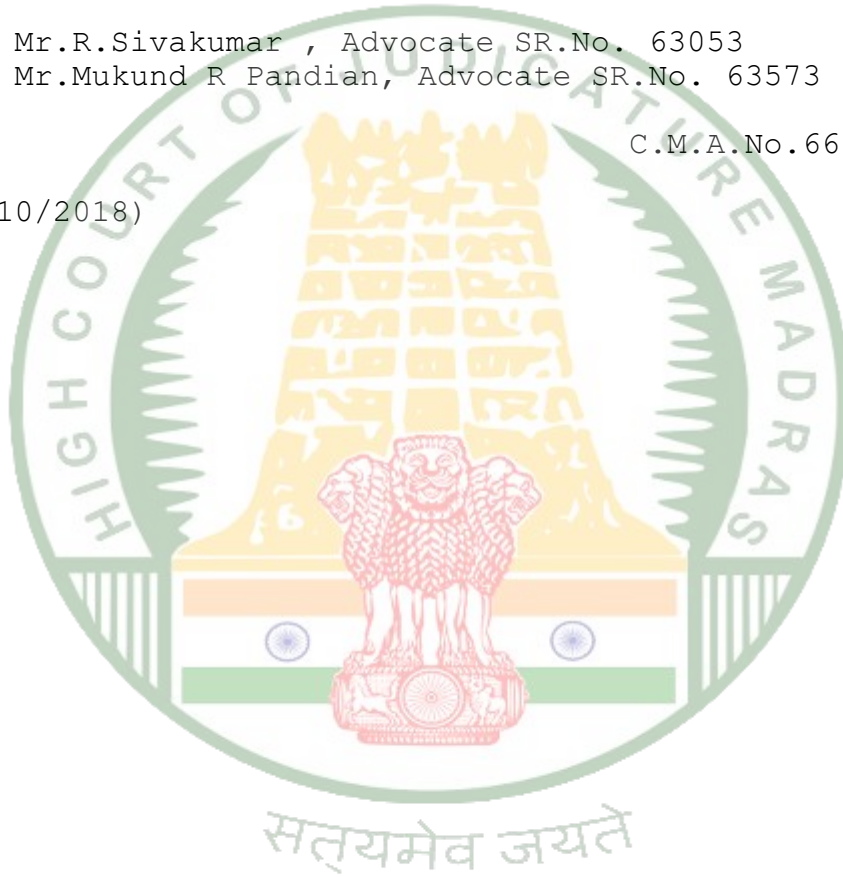
The Motor Accidents Claims Tribunal
[Additional District Court],
Krishnagiri.

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+1cc to Mr.R.Sivakumar , Advocate SR.No. 63053
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C.M.A.No.666 of 2011

ASK(16/10/2018)



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