

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 26.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN  
Civil Miscellaneous Appeal No.518 of 2018  
and  
CMP.Nos.4527 and 13148 of 2018

The Divisional Manager,  
M/s.TATA AIG General Insurance Co. Ltd.,  
No.1, Commander-in Chief Road,  
Ethiraj Street,  
Ezhumbur, Chennai. ... Appellant/ 2<sup>nd</sup> Respondent

Vs

1.Elumalai ... 1<sup>st</sup> Respondent / Petitioner

2.Subramani

3.Gopi

4.Sambathraj ... Respondents 2 to 4/ Respondents 1,3,4

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 13.04.2017 passed in M.C.O.P.No.309 of 2014 by the Motor Accidents Claims Tribunal, (Special Subordinate Court), Thiruvannamalai.

For Appellant : Mrs.Harini  
for M/s.M.B.Gopalan Associates

For Respondents: Mr.B.Jawahar - (for R1)

No Appearance - (for R2 & R3)

#### JUDGMENT

Calling in question the decree and judgment dated 13.04.2017 passed in M.C.O.P.No.309 of 2014 by the Motor Accidents Claims Tribunal (Special Subordinate Court), Thiruvannamalai, the present civil miscellaneous appeal is filed.

2. The facts in a nutshell are as under: The 1<sup>st</sup> respondent is the claimant. It is the case of the 1<sup>st</sup> respondent that on 2.6.2013 at about 6.30 P.M., the 1<sup>st</sup> respondent was travelling as pillion rider in the

motorcycle bearing registration No.TN-25 AE 0897 belonging to the 2<sup>nd</sup> respondent from Thandarampattu towards Kangeyanoor village. When they were nearing Thenmudiyanoor lake bund, the 2<sup>nd</sup> respondent drove the motorcycle in a rash and negligent manner dashed against the motorcycle bearing registration No.TN-04 H 1102 which was coming in the opposite direction. Due to the impact, the 1<sup>st</sup> respondent sustained multiple fractures on his right knee, right ankle and injuries all over the body. Immediately, the 1<sup>st</sup> respondent was admitted in the Government Hospital, Thiruvannamalai for treatment. Thereafter, he had taken treatment in Rajiv Gandhi Government Hospital, Chennai, Starlite Hospital, Chennai and Manakula Vinayagar Hospital, Pondicherry.

3. It is stated that based on the complaint, the S.I. of Police, Thandarampattu Police Station registered a case in Crime No.148 of 2013 under Sections 279, 337 IPC against the rider of the motorcycle bearing registration No.TN-25 AE 0897. The 1<sup>st</sup> respondent impleaded the owner and rider of the motorcycle bearing registration No.TN-04 H 1102 as respondents 3 and 4 in the claim petition. At the time of accident, the motorcycle bearing registration No.TN-25 AE 0897 was insured with the appellant insurance company. In such back drop, the 1<sup>st</sup> respondent filed the claim petition claiming compensation of Rs.15,00,000/-.

4. The appellant insurance company filed a counter affidavit before the Tribunal denying the manner of accident and further stated that there is no proof of age, occupation and income of the injured. It was also averred that the vehicle involved in the accident was not insured with the appellant and also the rider of the motorcycle did not possess valid and effective driving license to drive the vehicle. Thus, there is violation of policy conditions and hence, the appellant is not liable to pay the compensation to the 1<sup>st</sup> respondent. It is also averred that the rider of the motorcycle bearing registration No.TN-4 H 1102 drove the same in a rash and negligent manner and dashed against the motorcycle bearing registration No.TN-25 AE 0897 and caused injuries to the 1<sup>st</sup> respondent. The charge sheet was also filed against the rider of the motorcycle bearing registration No.TN-04 H 1102 and therefore, the appellant is not liable to pay the compensation to the 1<sup>st</sup> respondent. Anyhow, the compensation claimed by the 1<sup>st</sup> respondent is excessive.

5. Before the Tribunal, on the side of the 1<sup>st</sup> respondent, 3 witnesses were examined and Exs.P1 to P11 were marked. On the side of the appellant insurance company, R.W.1 and R.W.2 were examined and Exs.R1 to R3

were marked.

6. Finding that the accident occurred due to rash and negligent driving of the motorcycle bearing registration No.TN-25 AE 0897 and that the appellant who is the insurer of the offending vehicle is liable to pay the compensation, the Tribunal awarded total compensation of Rs.9,92,000/- in favour of the 1<sup>st</sup> respondent payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The Tribunal also held that since there was violation of policy conditions, it had ordered pay and recover from the owner of the motorcycle bearing registration No.TN-25 AE 0867. Assailing the said judgment and decree, the present appeal is filed by the appellant insurance company questioning the negligence as well as quantum of compensation.

7. The learned counsel for the appellant vehemently contended that the Tribunal erred in holding that the 2<sup>nd</sup> respondent was negligent when the fault was entirely on the part of the third party vehicle. The FIR and charge sheet filed in the criminal case prima facie establish that there was no fault on the part of the 2<sup>nd</sup> respondent's two wheeler. He would submit that the Court below failed to appreciate that the third party vehicle had come to the wrong side and caused the accident and therefore, the claim as against the 2<sup>nd</sup> respondent and the appellant ought to have been dismissed. As far as quantum of compensation awarded by the Court below is concerned, the learned counsel submitted that the Court below erred in awarding inordinately high compensation which is not justified in the facts and circumstances and in fact in the case on hand, the injuries and disability were exaggerated for the purpose of getting high claim.

8. Per contra, the learned counsel appearing for the 1<sup>st</sup> respondent claimant reiterated the contentions raised before the Tribunal and prayed for dismissal of this appeal.

9. I have heard Mrs.Harini for M/s.M.B.Gopalan Associates, learned counsel for the appellant and Mr.B.Jawahar, learned counsel for the 1<sup>st</sup> respondent and also perused the materials available on record. No representation on behalf of the respondents 2 and 3.

10. The case of the appellant is that the accident occurred due to the rash and negligent driving of the rider of the motorcycle bearing registration No.TN-04 H 1102 and there is no fault on the part of the rider of the motorcycle vehicle bearing registration No.TN-25 AE 0897 in which the 1<sup>st</sup> respondent travelled as pillion rider and

sustained injuries.

11. On the other hand, it is the say of the 1<sup>st</sup> respondent that the rider of the motorcycle bearing registration No.TN-25 AE 0897 drove the same in a rash and negligent manner and dashed against the motorcycle bearing registration No.TN-04 H 1102 and caused the accident and therefore, the owner and insurer of the motorcycle bearing registration No.TN-25 AE 0897 is liable to pay the compensation.

12. The appellant mainly relied upon the FIR and the charge sheet filed against the rider of the motorcycle bearing registration No.TN-04 H 1102. In his evidence, P.W.1 categorically deposed that on the date of occurrence, he was travelling as pillion rider in the motorcycle bearing registration No.TN-25 AE 0897 from Thandarampoattu towards Kangeyanur village and while so proceeding, the rider of the motorcycle, who is none other than his son-in-law, drove the same in a rash and negligent manner and dashed against the motorcycle bearing registration No.TN-04 H 1102, which was coming on the opposite direction.

13. In the case on hand, P.W.2 is the complainant, who is the wife of P.W.1. In her evidence, P.W.2 deposed that the rider of the motorcycle bearing registration No.TN-25 AE 0897 alone caused the accident. She further stated that the police obtained signature in an unwritten paper and then registered the FIR and she was not aware of the contents written in the complaint. The fact remains that P.W.2 also travelled at the time of accident in the offending motorcycle as pillion rider and the 2<sup>nd</sup> respondent is the driver-cum-owner of the offending vehicle. Taking into consideration of the evidence of P.W.1 and 2 and also the documents produced before it, the Tribunal held that the the accident occurred due to rash and negligent driving of the rider of the motorcycle bearing registration No.TN-25 AE 0897 and the appellant being the insurer is liable to pay the compensation.

14. The learned counsel for the appellant contended that at the time of accident, the rider of the motorcycle bearing registration No.TN-25 AE 0897 was not having valid driving licence to ride the motorcycle and thus violated the policy conditions. Therefore, the Tribunal ordered pay and recover. Nothing has been produced to show that at the time of accident the rider of the motorcycle bearing registration No.TN-25 AE 0897 was possessing valid driving licence. Since there was violation of policy conditions, , the Tribunal was right in ordering pay and recover and this Court finds no reason to interfere with

the same.

15. It is apposite to mention that challenging the order of pay and recover, the first respondent claimant and/or the 2<sup>nd</sup> respondent/driver-cum-owner of the motorcycle bearing registration No.TN-25 AE 0897 has not preferred any appeal. Before the Tribunal, the 2<sup>nd</sup> respondent remained ex parte and before this Court, despite service of notice, he has not entered appearance.

16. As far as quantum of compensation awarded by the Tribunal is concerned, the Tribunal awarded total compensation of Rs.9,92,000/- in favour of the first respondent. In the accident, the first respondent sustained Grade-III compound fracture of both bones of right leg. Initially, the first respondent had taken treatment in the Government Hospital, Tiruvannamalai and thereafter, he was admitted in Rajiv Gandhi Government General Hospital, Chennai for further treatment. In Rajiv Gandhi Government General Hospital, Chennai, the first respondent had taken treatment as inpatient from 03.6.2013 to 20.6.2013. Since the fracture sustained by the first respondent did not get cured despite treatment, he had taken further treatment at Shri Manakula Vinayagar Medical College and Hospital, Pondicherry where he was admitted as inpatient from 14.5.2015 to 04.6.2015. Ex.P5 is the discharge summary issued by Shri Manakula Vinayagar Medical College and Hospital, Pondicherry. In his evidence, P.W.1 deposed that due to the fracture sustained by him, he was unable to do his normal work and also unable to walk.

17. P.W.3-Doctor examined the first respondent and issued Ex.P10-disability certificate assessing the disability at 70%. The petitioner also produced Ex.P6-disability certificate issued by the District Differently Abled Welfare Officer, Villupuram assessing the disability at 70%.

18. Though the first respondent stated that he was earning Rs.10,000/- per month, no document has been produced. In the absence of documentary proof, the Tribunal has taken the monthly income of the first respondent at Rs.5000/-. By adopting multiplier method, the Tribunal awarded Rs.4,62,000/- towards loss of earning capacity. Though the appellant contended that the Tribunal erred in awarding Rs.4,62,000/- towards loss of earning by adopting multiplier method, nothing has been produced to establish the same.

19. In a catena of decisions, the Hon'ble Supreme

Court as well as this Court held that in injury cases, the Tribunal/Court can apply multiplier and award compensation. Since this is a case in which the first respondent sustained 70% disability, the Tribunal was right in applying the multiplier and this Court does not take a different view.

20. It is stated by the first respondent that at the time of accident, he was doing collie work and was earning Rs.10,000/- per month. Admittedly, there was no documentary proof to prove the same. In the absence of proof, the Tribunal has taken the monthly income of the first respondent at Rs.5,000/-, which in my opinion is reasonable and as rightly observed by the Tribunal even the coolie could very well earn a sum of Rs.5,000/- per month. Thus, a sum of Rs.4,62,000/- awarded by the Tribunal towards loss of earning by applying the multiplier method is quite reasonable and the same is maintained.

21. As far as the medical expenses is concerned, the first respondent produced Ex.P8-medical bills to show that he had incurred a sum of Rs.3,20,000/- towards medical expenses and transport charges. The Tribunal has rightly taken Ex.P8-medical bills and awarded Rs.3,20,000/- towards medical expenses and transport charges and the same is confirmed.

22. The Tribunal awarded Rs.1,20,000/- towards loss of earning during treatment period. The Tribunal while awarding the said amount observed that the first respondent could have lost his income at least for 2 years during the treatment period. Nothing has been produced to show that the first respondent had taken treatment continuously for two years. In the absence of any proof, this Court finds that the Tribunal erred in awarding Rs.1,20,000/- towards loss of earning during the treatment period. Based on the medical records available on record, the first respondent should have lost his income for at least for six months. Therefore, it would be appropriate to award a sum of Rs.30,000/- towards loss of income for six months. Thus, a sum of Rs.1,20,000/- awarded by the Tribunal towards loss of earning during treatment period is reduced to Rs.30,000/-.

23. The Tribunal awarded Rs.75,000/- towards pain and suffering, Rs.10,000/- towards attender charges and Rs.5,000/- towards extra-nourishment. Considering the nature of injuries sustained by the first respondent in the accident and also the period of treatment undergone by him, the amount awarded by the Tribunal under the heads pain and suffering, attender charges and extra-nourishment are

maintained.

24. In view of the above discussion, the total compensation of Rs.9,92,000/- awarded by the Tribunal is reduced as under:

| Heads                                  | Rs.         |
|----------------------------------------|-------------|
| Disability                             | 4,62,000/00 |
| Medical expenses and transport charges | 3,20,000.00 |
| Pain and suffering                     | 75,000.00   |
| Loss of earning during treatment       | 30,000.00   |
| Attender charges                       | 10,000.00   |
| Extra-nourishment                      | 5,000.00    |
| Total                                  | 9,02,000.00 |

25. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.9,92,000/- awarded by the Tribunal in M.C.O.P.No.309 of 2014 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Tiruvannamalai is reduced to Rs.9,02,000/-. The appellant insurance company is directed to deposit the reduced compensation with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order as per the mode stated by the Tribunal in its award and then recover the same from the second respondent. On such deposit, the appellant is entitled to withdraw the amount with accrued interest on filing proper cheque application before the Tribunal. Consequently, connected miscellaneous petitions are closed.

Sd/--

Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

vs

To

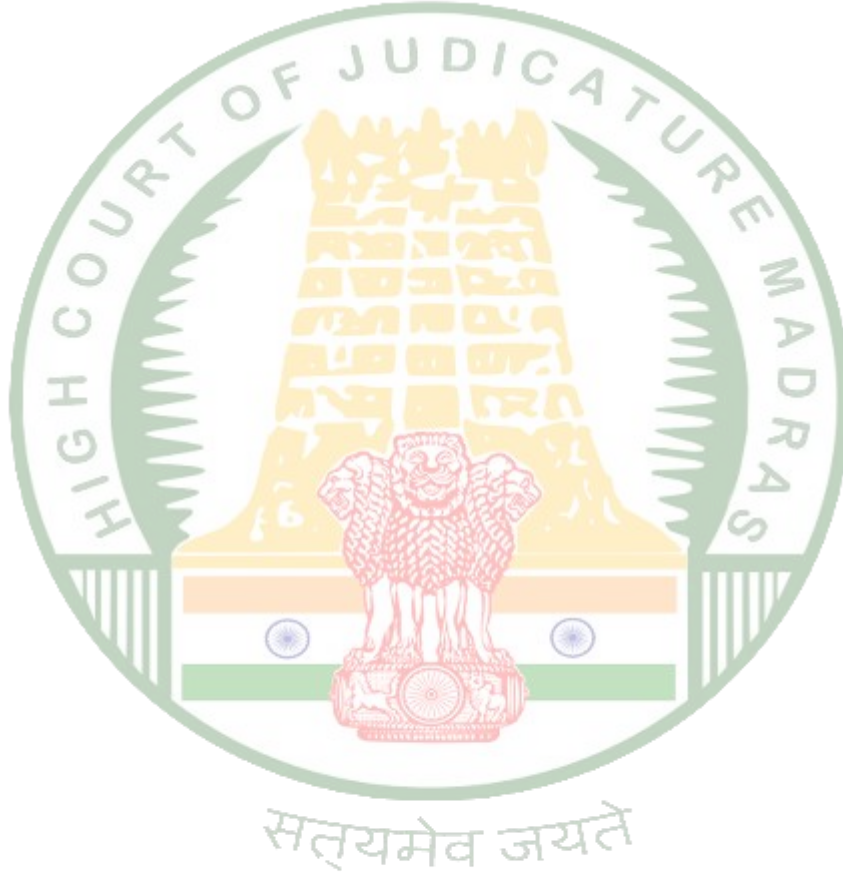
The Motor Accident Claims Tribunal,  
Special Subordinate Judge,  
Thiruvannamalai.

2.The section officer,  
VR Section,  
High court  
Madras

+1cc to M/s.M.B.Gopalan Associates. , Advocate SR.No. 67588  
+1cc to Mr. B.Jawahar, Advocate SR.No. 66472

C.M.A.No.518 of 2018 and  
CMP.Nos.4527 and 13148 of 2018

ASK(14/12/2018)



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