

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.Nos.1054 of 2011 and 3403 of 2010 and
M.P.No.1 of 2010 in
C.M.A.No.3403 of 2010

C.M.A.No. 1054 of 2011

ElumalaiAppellant / Petitioner

vs.

1.Chinnadurai

2.Divisional Manager,

The New India Assurance Co. Ltd.,

No.42, Big Street,

Thiruvannamalai.

...Respondents/Respondents

C.M.A.No. 3403 of 2010

Divisional Manager,

The New India Assurance Co. Ltd.,

No.42, Big Street,

Thiruvannamalai.

...Appellant/2nd Respondent

vs.

1.Elumalai

2.Chinnadurai

...Respondents

Prayer in C.M.A.No. 1054 of 2011: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 12.04.2010, in M.C.O.P.No.67 of 2007 on the file of the Motor Accidents Claims Tribunal (Additional Sub Court), Thiruvannamalai.

Prayer in C.M.A.No.3403 of 2010: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 12.04.2010, in M.C.O.P.No.67 of 2007 on the file of the Motor Accidents Claims Tribunal (Additional Sub Court), Thiruvannamalai.

For Appellant in
C.M.A.No.1054 of 2011 : Mr.F.Terry Chellaraja

For Appellant in
C.M.A.No.3403 of 2010 : Mr.S.Manohar

For Respondents in
C.M.A.No.1054 of 2011 : Mr.S.Manohar
for R2
Mr.S.Sounthar
for R1

For Respondents in
C.M.A.No.3403 of 2010 : Mr.F.Terry Chellaraja
for R1
Mr.S.Sounthar
for R2

COMMON JUDGMENT

In C.M.A.No.1054 of 2011, the appellant is the claimant in M.C.O.P.No. 67 of 2007, on the file of the Motor Accidents Claims Tribunal (Additional Sub Court), Thiruvannamalai. The appellant/ claimant filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 03.08.2006. The New India Assurance Company Limited, the second respondent in the above said M.C.O.P. has filed C.M.A.No.3403 of 2010 questioning their liability as well as the quantum of compensation awarded by the Tribunal. The appellant/claimant filed C.M.A.No.1054 of 2011 seeking for enhancement of compensation.

2.For the sake of convenience, the parties are called as per their ranking in the Tribunal.

3.The brief case of the claimant is as follows:

(i) The claimant was working as mason on the date of the accident, earning a sum of Rs.3,000/- per month.

(ii) On 03.08.2006, when the claimant was walking near Thiruvannamalai Town, Kilnathur railway gate, an auto bearing Registration No. TCX 6715 driven by the driver of the first respondent came in a rash and negligent manner and hit against the claimant, as a result of which, he suffered fracture of ulna bone on the left hand. He was immediately taken to Nagariputhur Sidhavaithiya Hospital, and then, on 08.08.2006, he was admitted in Thiruvannamalai Government Hospital. Subsequently, he took treatment in many private hospitals.

4. The owner of the auto bearing Registration No. TCX 6715 was absent before the Tribunal and therefore, he was set ex-

parte. The New India Assurance Company Limited contested the claim petition. The Tribunal after analysing the evidence on record, awarded a sum of Rs.80,000/- together with interest at the rate of 7.5% per annum to the claimant.

5. Heard both sides and perused the materials available on record.

6. The Insurance Company has filed C.M.A.No.3403 of 2010, on the ground that the driver of auto bearing Registration No. TCX 6715, had a licence to drive only 'Light Motor Vehicle' and that he had no endorsement or badge authorising him to drive transport vehicles and hence, they are not liable to pay compensation to the claimant. The possession of endorsement or badge in driving licence is no longer res integra in view of the Judgment pronounced by the Apex Court in the case of Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017 (2) TN MAC 145 (SC), wherein, it has been held that once a licence is issued to drive 'Light Motor Vehicle', it would also mean specific authorization to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. Admittedly, the driver of the said auto was having valid driving licence and only badge was not there. In view of the above decision of the Apex Court, the plea raised by the Insurance Company stands negative. Accordingly, the owner of the said auto and the Insurance Company are jointly and severally liable to pay compensation to the claimant. In this view of the matter, the C.M.A.No. 3403 of 2010 is liable to be dismissed.

7. On the point of enhancement of the quantum of compensation awarded by the Tribunal, taking into consideration, the deposition of PW2 and the fracture of ulna bone on the left hand of the claimant, the Tribunal has rightly assessed the disability as 30%. The Tribunal has awarded a sum of Rs.60,000/- towards the disability by awarding a sum of Rs.2,000/- per percentage of disability. The Tribunal has fixed the notional income of the claimant as Rs.3,000/- per month and calculated loss of income for three months which would come to Rs.9,000/-.

8. The Tribunal has awarded a sum of Rs.11,000/- in total under the heads 'transportation', 'extra nourishment', 'attender's charges' and 'pain and sufferings' respectively. Since the claimant has sustained fracture of ulna bone of the left hand, this Court is inclined to enhance the award passed under all the above mentioned heads in total from Rs.11,000/- to Rs.56,000/-. The total award passed by the Tribunal is enhanced from Rs.80,000/- to Rs.1,25,000/-, which shall carry

interest at the rate of 7.5% per annum.

9. In the result,

(i) The C.M.A.No. 1054 of 2011 is partly allowed. No costs.

(ii) The C.M.A.No. 3403 of 2010 is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(iii) The compensation amount awarded by the Tribunal is enhanced from Rs.80,000/- to Rs.1,25,000/-. The order passed by the Tribunal, in respect of the liability is confirmed.

(iv) The appellant/claimant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

(v) The New India Assurance Company Limited, is directed to deposit the enhanced compensation awarded i.e., Rs.1,25,000 /- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 67 of 2007, dated 12.04.2010, on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Thiruvannamalai.

Sd/-

Assistant Registrar(CCC)

//True Copy//

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Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
The Additional Subordinate Court,
Thiruvannamalai.

copy to: The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.M.Malar, Advocate, S.R.No.17143

+1 cc to Mr.B.Jawahar, Advocate, S.R.No.17743

+1 cc to Mr.S.Manohar, Advocate, S.R.No.17730

C.M.A.Nos.1054 of 2011
and 3403 of 2010 and
M.P.No.1 of 2010 in
C.M.A.No.3403 of 2010

CP (CO)
SSM(27/04/2019) .