

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2980 of 2008 and
M.P.Nos.1 of 2008 and 1 of 2009

M/s.Royal Sundaram Alliance
Insurance Co.Ltd.
21, Pattulos Road, Chennai-2.Appellant/2nd Respondent

Vs

1.Murugadass ..Respondent/Petitioner

2.Narayanan
(Exparte in the lower Court)Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 10.04.2008 made in MCOP No.503 of 2004 on the file of the Motor Accident Claims Tribunal, (Principal Sub Judge) at Chengalpattu.

For Appellant : Mrs.R.Sreevidhya

For Respondent : R1 -Mr.P.D.Selvaraj
R2 - Exparte

J U D G M E N T

By the impugned judgement and decree dated 10.04.2008 passed in MCOP.No.503 of 2004, the Tribunal, after having held that the accident had occurred only due to the rash and negligent act on the part of the rider of the Motorcycle bearing Registration No.TN07 AA 7094, which was insured with the appellant herein, has awarded a total compensation of Rs.2,11,212/- as against the claim of Rs.4,00,000/- made by the first respondent/ claimant for the injuries sustained by him, which was directed to be payable by the appellant insurance company with a right to recover the same from the owner of the vehicle. The breakup details of the compensation runs thus:-

S.No	Head	Compensation (in.Rs.)
1.	Medical Expenses	51,212.00
2.	Extra nourishment	5,000.00
3.	Loss of earning	15,000.00
4.	Injuries	1,20,000.00
5.	Pain and suffering	20,000.00
Total		2,11,212.00

2.The learned counsel for the appellant submitted that when the rider of the motorcycle did not possess valid driving licence and he rode the vehicle with two pillion riders, in violation of the breach of policy condition, the Tribunal ought to have exonerated the appellant from paying the compensation and ought to have directed the owner of the vehicle to pay the same. She also submitted that the compensation awarded by the Tribunal on all the counts are on the higher side and they need significant reduction.

3.Per contra, the learned counsel for the 1st respondent/claimant submitted that the Tribunal after having analysed all the materials and evidence available on record, has rightly rendered its findings on negligence and liability of the insurance company with a right to pay and recovery and awarded the just compensation and hence, the same require no interference by this Court.

4.Heard both sides and perused the records.

5.A perusal of the award would disclose that the Tribunal has discussed the proximate cause of the accident between the vehicles based on the First Information Report and ultimately held that the accident had happened only due to the rash and negligent riding of the rider of the two wheeler, which was insured with the appellant herein. The Tribunal has also discussed about the third party claims and in paragraph 8 of the award, has rightly rendered a finding on negligence and directed the Insurance Company to pay the compensation initially to the claimant and later on, recover the same from the owner of the vehicle, which this Court is not inclined to interfere, as there was no contra evidence adduced on the side of the appellant insurance company to speak about the manner / factum of accident.

6.As regards the quantum of compensation, P.W.1/claimant has deposed that he was working as a lorry driver, besides doing agricultural work and was earning a sum of Rs.5,000/- per month; due to the accident, he fell down and sustained bone fracture on his both cheek and his nose middle bone broken and also sustained bone fracture above the right eye brow and lost teeth on upper jaw and sustained injuries on his both legs and hands; plate was implanted on his both cheeks and above the eyebrow by surgery; and he has taken treatment as inpatient for 5 days in Chengalpattu Medical College and Hospital i.e., from 20.08.2004 and 25.08.2004 and for 9 days in Kalyani Private Hospital, Adyar and as outpatient for 3 months. His evidence was corroborated by P.W.2/Medical officer, who, after examining the respondent/claimant, stated that because of the bone fracture, the movement of the jaw was restricted and due to disarrangement of teeth, it is very difficult for the respondent/claimant to chew the hard substances; because of the mal-union of jaws and rigidity and restriction of movement, he finds it difficult to converse; thus, the respondent/claimant sustained permanent disability to the tune of 50% for the injuries and 45% towards loss of teeth. Ex.P11 is the disability certificate. Exs.P2 and P3 are the discharge summaries. However, there is no mention about loss of teeth. Considering those oral and documentary evidence, the Tribunal has rightly taken the permanent disability at 60% and following the decision of this Court in the Managing Director, TNSTC, Trichy v. S.Kannappan [2007 (2) TNMAC], fixed Rs.2,000/- per 1% disability and ultimately, awarded Rs.1,20,000/- towards compensation under the head "injuries", besides awarding Rs.20,000/- towards pain and suffering and Rs.15,000/- towards loss of earning, which are just and very reasonable and hence, the same are hereby confirmed.

7.Further, the Tribunal has awarded Rs.51,212/- towards medical expenses, based on Exs.P4 to P6-medical bills, which is the actual expenses incurred by the respondent/claimant for the treatment taken by him and hence, the same does call for any interference at the hands of this Court. That apart, Rs.5,000/- awarded towards extra nourishment is also fair and just and the same is hereby confirmed.

8.In such view of the matter, this Civil Miscellaneous Appeal has to fail and is accordingly, dismissed. No costs. The appellant / Insurance Company shall deposit the entire compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of

a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount lying in the deposit to the Savings Bank Account of the claimant / injured / first respondent herein, through RTGS, within one week thereafter. Consequently, the connected MPs are closed. It is made clear that the pay and recovery ordered by the Tribunal shall remain unaltered.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

srk/vrn
To

1. The Principal Subordinate Judge
The Motor Accident Claims Tribunal/Principal Sub Court
Chengalpattu.
 2. The Section Officer,
V.R. Section
High Court, Madras.
- +1 CC to Mr.D. Selvaraj, Advocate sr 55336.
+1 CC to Mrs.R.Sreevidhya, Advocate sr 56060.
+1 CC to Mr.D. Selvaraj, Advocate sr 55336(06/01/2020)

C.M.A.No.2980 of 2008

LN (CO)
SP (06/12/2019)

WEB COPY