

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

C.M.A.No.1286 of 2010

Suresh @ Thangarasu

...Appellant/Petitioner

Vs

1. M. Boobathi @ Murugesan

2. The Branch Manager,

The Cholamandalam,

General Insurance Co-Ltd.,

Coimbatore.

...Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and decree dated 10.11.2009 and made in M.A.C.T.O.P.No. 263/2006 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court Gobichettipalayam.

For Appellant : Mr.S.N.Manoharan

For Respondent - 2 : Mr. N. Vijayaraghavan

JUDGMENT

This appeal has been preferred against the Judgment and decree dated 10.11.2009 and made in M.A.C.T.O.P.No. 263 of 2006 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court Gobichettipalayam.

2.The case in brief, is as follows:

On 10.11.2004 at about 8:00 hours, when the appellant herein was riding his bicycle near by Pudukkottai by Pudukkottai Pirivu, the first respondent has driven his TVS 50 bearing Registration No.TN 36 H 1876 in a high speed with rash and negligent manner and dashed the appellant and he has sustained multiple injuries and fractures and taken treatment for one month as in-patient at Government Hospital, Erode. Hence, he filed a claim petition before the Tribunal claiming a sum of Rs.2,50,000/- as compensation. On a consideration of the materials and evidence available on record, the Tribunal has

arrived at the total compensation of Rs.1,09,400/- with interest at the rate of 7.5% p.a., from the date of petition till the date of deposit.

3. Challenging the same, the appellant has filed the present Civil Miscellaneous Appeal.

4. The learned counsel for the appellant has submitted that the negligent driving of the two wheeler is the cause for the accident. He further submitted that he was doing building work and due to the injuries sustained in the accident he is not able to continue his work as before. However, the amount awarded by the Tribunal is very low when compared to the injuries sustained in the accident and prays to enhance the award amount.

5. The learned counsel for the respondent/Insurance company has submitted that the rider of the two wheeler does not possess valid driving license at the time of accident and he was charged under Section 181 of the Motor Vehicles Act and paid fine before the Judicial Magistrate-II Gobichettipalayam. Therefore, there was a breach of policy conditions and the award passed by the Tribunal need not be interfered with by this Court.

6. Heard both sides and perused the materials available on record carefully and meticulously.

7. Before the Tribunal, 2 witnesses and 9 exhibits were marked and on the side of the appellant and 2 witnesses and 4 exhibits were marked on the side of the respondents.

8. With regard to quantum, considering the avocation of the injured, the gross salary was taken as Rs.3,000/- . The Doctor who examined the injured assessed disability at 15% and issued Disability Certificate which was marked as Ex.P.8 and also taking note of the age of the injured applied '16' as multiplier and arrived Rs.86,400/- as loss of income, which is calculated hereunder:

Monthly Income of the injured	-	Rs.3,000
Disability @ 15%	(Rs.3,000x15/100)	- Rs.450/-
Annual income	Rs.450x12	- Rs.5,400/-
Loss of earning power	(Rs.5,400x16)	- Rs.86,400/-

Considering the other relevant materials, the Tribunal has awarded Rs.3,000/- towards loss of income, Rs.6,000/- towards partial loss of income, Rs.2,000/-towards Transportation, Rs.3,000/- towards loss of medical expenses, Rs.2,000/- towards extra nourishment and Rs.2,000/- towards damages to cloths and articles and Rs.5,000/- towards pain and sufferings. Thus, the total compensation was quantified at Rs.1,09,400/- The findings

rendered on quantum by the Tribunal are also based on settled principles of law, probabilities of case and weightage of evidence. Hence, this Court is of the view that interference on quantum is uncalled for.

9. With regard to the negligence aspect, the Tribunal further observed that the negligent driving of the two wheeler is the cause for the accident. The Tribunal, considering the manner of the accident, and relying upon the evidence, has fixed the negligence on the part of the rider of the two wheeler and fastened the liability on the owner of the two wheeler. This Court is satisfied with the findings rendered by the Tribunal and is of the considered view that even though the rider of the two wheeler does not possess valid driving license at the time of the accident the second respondent/Insurance company as the Insurer has to pay the compensation and recover the same from the owner of the vehicle. As per the Judgment of (2018) 9 Supreme Court cases 650 in [Shamanna and another vs Divisional Manager, Oriental Insurance Company Limited and others] it has been held that even though the driver of the alleged vehicle involved in the accident, does not possess valid driving license at the time of accident the Insurer has to pay and recover the same from the owner of the vehicle. The relevant para is extracted hereunder:

"This appeal arises out of the judgment dated 14.09.2016 passed by the High Court of Karnataka at Dharwad Bench in MFA No.24534 of 2010 in and by which the High Court reversed the award passed by the Tribunal for "pay and recover" holding that the owner of the vehicle is liable to pay the compensation to the appellants/claimants. The High Court enhanced the compensation from Rs.3,55,500/- to Rs.4,94,700/- with interest at the rate of 6% per annum. "

In the result, the impugned judgment of the High Court insofar as enhancement of the compensation to Rs.4,94,700/- is affirmed. Insofar as direction of the impugned judgment directing the appellants/claimants to recover the compensation from the owner of the vehicle is set aside and the appeal is partly allowed. The first respondent insurance company shall pay the enhanced compensation to the appellants/claimants along with the accrued interest and the insurance company shall recover the same from the owner of the vehicle. No costs.

10.The above Judgment squarely applies to the present case and this Court does not intend to take different view in this matter. In the result, the Civil Miscellaneous Appeal is partly allowed. The 2nd respondent/Insurance Company is directed to deposit the award amount, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the owner of the vehicle/respondent herein. On such deposit being made, the Tribunal is directed to transfer the deposited amount, through RTGS to the appellant. No Costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

smn

To

1. The Motor Accident Claims Tribunal,
II Additional Sub Judge,
Gobichettipalayam.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.N. Vijayaraghavan, Advocate SR.No.79397

+1cc to Mr.S.N.Manoharan, Advocate SR.No.79072

C.M.A.No.1286 of 2010

SVI (CO)
GMY (07/08/2020)

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