



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2534 of 2009

and

M.P.No.1 of 2009

The Branch Manager,
United India Insurance Co., Ltd.,
No.24, Whites Road,
Chennai - 600 014.

...Appellant

Versus

1.A.Palanivel
2.M.Sekar

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 19.09.2008 made in M.A.C.T.O.P.No.627 of 2004 on the file of the Motor Accident Claims Tribunal, passed by the Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.M.J.Vijayaraghavan

For Respondents : Mr.K.T.S.Sivakumar (for R1)

J U D G M E N T

The Insurance company is the appellant herein. Challenging the award dated 19.09.2008 made in M.A.C.T.O.P.No.627 of 2004 on the file of the Motor Accident Claims Tribunal, passed by the Chief Judicial Magistrate, Namakkal, insofar as it relates to, by fixing the liability on them.

2.The first respondent is the claimant, who filed the claim petition in MACT.OP.No.627 of 2004 alleging that on 04.11.2002 at about 4.00 pm, the claimant was purchasing things from the Belukurichi shop and returned to home in his TVS 50 bearing Regn.No.TDM-3778, keeping left side, at that time a mini Auto bearing Regn.No.TN-30-B-6215 was coming from Sendamangalam towards Belukurichi bus stand, which was driven by its driver in a rash and negligent manner and dashed against the claimant's motorcycle. Due to the impact, the claimant sustained grievous injuries and multiple injuries all over the body. Immediately,



the claimant was admitted in Nataraj Hospital, Rasipuram. The claimant was aged 45 years and working as an agricultural coolie, and earning a sum of Rs.2,000/- per month at that time of the accident. Due to rash and negligent manner of driving of the driver of the second respondent herein, the accident occurred. Hence, the driver and the insurer of the offending vehicle is liable to pay the compensation, therefore, the claimant filed the above said claim petition claiming a sum of Rs.5,00,000/- for the injuries sustained in the above said accident.

3.The claim petition has been resisted by the appellant/ Insurance company by contending that it was an error committed on the part of the auto driver, who was driving the vehicle in a careless manner, which is the cause for accident. Therefore, the Insurance company pleaded that they cannot be mulcted with any liability to pay compensation to the claimant. The insurance company also denied the various averments made by the claimant in the claim petition, with respect to the age, occupation, avocation and income. Thus, the insurance company prayed for dismissal of the claim petition.

4.Before the Tribunal, on the side of the claimant, he examined himself as PW.1 besides examining one Dr.K.M. Ravichandran as PW.2 and twelve documents as Ex.P1 to P12 were marked. On the respondents side, one K.Sekar and N.Rajarathinam were examined as RW.1 & RW.2 respectively and two documents as Ex.R1 & R2 were marked.

5.After analysing the oral and documentary evidence, the Tribunal awarded a sum of Rs.78,900/- as compensation to the claimant. Aggrieved by the said award, the appellant has preferred the present appeal.

6.I have heard the submissions made by the either counsel and perused the materials available on record.

7.After hearing both sides, the Tribunal held that the accident occurred due to rash and negligent driving of the driver-cum-owner/second respondent herein of the offending vehicle namely Auto.

8.On the point of quantum, it is seen that PW.2/Doctor, who examined the claimant and assessed the disability at 30%. Taking note of the facts of the case, the Tribunal has come to the conclusion and awarded Rs.78,900/- as compensation to the victim/claimant.



WEB COPY

9. However, the grounds raised by the Insurance company in the appeal is that the driver of the auto did not possess necessary badge endorsement to drive the goods vehicle and relied upon Ex.R1/copy of driving license of the driver of the auto namely M.Sekar, which was issued by the Assistant officer of RTO.

10. On perusing the evidence of RW.1/K.Sekar, Assistant officer of RTO coupled with Ex.R1/driving license, it is seen that he is having valid license to drive LMV, however, his ill fate, he does not have license to drive the goods vehicle at the time of accident. In the light of the decision of the Honourable Supreme Court in [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,] reported in AIR 2017 SC 3668, wherein it has been held that a person who had a valid licence to drive a light motor vehicle can drive a vehicle of same category and obtaining endorsement or badge is not necessary. In view of the Judgment of the Hon'ble Supreme Court referred to above, the appellant/Insurance Company cannot be exonerated from its liability on the ground that the driver of the offending vehicle did not obtain endorsement or badge. In the absence of any positive evidence and contra evidence, the Tribunal has rightly fixed the liability on the part of the Insurance company and the same is hereby confirmed.

11. This Court is inclined to reassess the award amount in respect of the conventional heads. The Tribunal awarded Rs.30,000/- towards 30% disability and a sum of Rs.10,000/- for pain and suffering and the same are hereby confirmed. This Court does not want to interfere with said heads amount. The Tribunal awarded Rs.30,000/- towards the head of "injuries including grievous injuries", considering the facts and circumstances of the case, the same shall stand set aside.

12. Considering the age of the claimant and the year of accident take place on 2002, this Court is inclined to reassess the amount awarded of Rs.5,000/- under the heads of transportation and extra-nourishment, which is enhanced to Rs.10,000/- towards the same head. Further, a sum of Rs.900/- awarded for medical expenses and a sum of Rs.3,000/- towards loss of income are maintained. The Tribunal did not award any amount towards attender charges, hence, a sum of Rs.3,000/- towards Attender charges is awarded and a sum of Rs.3,000/- towards loss of amenities is awarded as compensation. Consequently, the total compensation of Rs.78,900/- awarded by the Tribunal is hereby modified and reduced to Rs.59,900/-. The break up details of the modified/reduced compensation amount are as follows:-



WEB COPY

Description	Amount awarded by Tribunal	Amount awarded by this Court
Grievous injuries	Rs.30,000/-	-
Pain and Sufferings	Rs.10,000/-	Rs.10,000/-
Disability	Rs.30,000/-	Rs.30,000/-
Medical expenses	Rs.900/-	Rs.900/-
Loss of income	Rs.3,000/-	Rs.3,000/-
Transportation&Extra nourishment	Rs.5,000/-	Rs.10,000/-
Attendant Charges	-	Rs.3,000/-
Loss of Amenities	-	Rs.3,000/-
Total	Rs.78,900/-	Rs.59,900/-

13.In the result, this Civil Miscellaneous Appeal filed by the Insurance company is partly allowed.

(ii) The compensation amount of Rs.78,900/- awarded by the Tribunal is hereby reduced to Rs.59,900/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation.

(iii) The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit, the first respondent/claimant is permitted to withdraw the modified award amount along with interest and costs, after adjusting the amount if any, already withdrawn.

(v) The appellant/Insurance Company is permitted to withdraw the excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.338 of 2008 on the file of the M.A.C.T.O.P.No.627 of 2004 on the file of the Motor Accident Claims Tribunal, passed by the Chief Judicial Magistrate, Namakkal, if the entire award amount has already been deposited by them.

(vi) There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

klt



To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Namakkal.

WEB COPY

Copy to:

The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to M/s.K.T.S.Sivakumar, Advocate, S.R.No.29338

+1 cc to M/s.M.J.Vijayaraghavan, Advocate, S.R.No.29895

C.M.A.No.2534 of 2009
and
M.P.No.1 of 2009

KAN(CO)
SSM(23/09/2019)