

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2272 of 2011

and

M.P.No.1 of 2011

The National Insurance Company Ltd.,  
81-D, Chetty Road,  
Thiruchengode.

....Appellant/2<sup>nd</sup> Respondent

Versus

1. Dilipkumar ... 1<sup>st</sup> Respondent/Petitioner  
2. Ravichandran

(2<sup>nd</sup> Respondent ex parte in  
Lower Court Notice may be  
dispensed with)

... 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of  
the Motor Vehicles Act, 1988 against judgment and decree in  
M.C.O.P.No.262 of 2005, dated 05.03.2007 on the file of the  
Motor Accidents Claims Tribunal, Subordinate Court, Sankagiri.

For Appellant : Mr.N.Vijayaraghavan  
For Respondents : Mr.C.Kulanthaivel for R1  
: R2- Ex parte

JUDGMENT

The present appeal has been filed by the Insurance Company  
challenging the award dated 05.03.2007 passed in M.C.O.P.No.262  
of 2005 on the file of the Motor Accidents Claims Tribunal,  
Subordinate Court, Sankagiri, in fixing the liability on their  
part to pay the compensation amount.

2.The 1<sup>st</sup> respondent is the claimant before the Tribunal. It  
is the case of the claimant that on 26.06.2005 at about 5.30  
p.m, he was going in his Motorcycle bearing Registration No.TN-  
34-B-0141. When the vehicle was nearing Patarai Medu Bus stop  
Tiruchengodu to Sankari Road, the Bus bearing Registration  
No.TN-34-C-4599, which was driven by its driver in a rash and  
negligent manner hit against the claimant's Motorcycle. In the

impact, the claimant fell down on the ground, due to which, he sustained grievous injuries on all over his body. After the accident, the claimant was immediately taken to the Government Hospital, Tiruchengodu, where from, he was shifted to National Hospital Erode. Later, he was shifted and admitted as an inpatient in K.G. Hospital, Coimbatore from 26.06.2005 to 13.07.2005, where he took further treatment for his injuries sustained in the said accident, he spent a sum of Rs.2,00,000/- towards medical expenses. The accident had occurred only due to rash and negligent driving of driver of the Bus. Therefore, the claimant made a claim petition in M.C.O.P.No.262 of 2005 before the Tribunal, claiming a sum of Rs.5,00,000/-. The Tribunal awarded a sum of Rs.4,37,400/- as a compensation.

3.Before the Tribunal, on the side of the claimant, he examined himself as PW.1 besides examining Dr. S. Mathivanan and two eye witnesses PW.3/Manikkavel and PW.4/Thigarajan. There were 12 documents marked as Ex's.P1 to P12. On the respondents side, neither oral nor documentary evidence was adduced.

4.Based upon the oral and documentary evidence the Tribunal has come to the conclusion that the accident had taken place, due to rash and negligent driving of the driver of the 1<sup>st</sup> respondent's vehicle. Upon considering the medical evidence under Ex.P12/disability certificate assessed by the Doctor/PW.2, the Tribunal has fixed disability at the rate of 60% and accordingly awarded compensation of Rs.60,000/-.

5.Challenging the award amount under the head of disability is on the higher side, the learned counsel for the appellant would contend that the claimant was working as a computer operator, he was aged 18 years and earning a sum of Rs.5,000/- per month. Even though it was not properly proved, the Tribunal considering the year of the accident and his age, fixed his monthly income notionally at Rs.2,000/- per month and arrived at Rs.24,000/- per annum. Considering his disability as functional disability, the Tribunal adopted multiplier 16 and arrived at Rs.3,84,000/- towards permanent disability. Taking note of the functional disability at 60%, the Tribunal has fixed at Rs.2,30,400/- for his future prospects, which according to the counsel for the appellant is on the higher side and excessive, hence, he prayed for allowing the appeal.

6.I have heard the submission of counsel for both sides and perused the materials available on record.

7.On going through the pleadings as well as the counter filed by the appellant Insurance Company before the Tribunal it is evident that there is no serious dispute raised with regard to the quantum as well as the assessment of disability at 60%

for the injuries sustained by the claimant in the said accident. Further, there is no complaint given against the insurer to CB-CID for re-investigation of the criminal case registered in relation to the accident. In the absence of both pleadings and evidence before the Tribunal, this Court finds that there is no merit on the said above contentions.

8.It is clearly proved under the evidence of Ex's.P2, P9, to P12 and the deposition of the Doctor/PW.2, who examined the claimant that the claimant sustained grievous injuries on Left eye, an irregular laceration exposing the frontal bone fracture as 6 c.m x 2 c.m, Abrasion on right knee and Contusion on right upper arm. Further, the Ophthalmologist opined that there is a traumatic optic neuropathy left eye 6. operation finding; Left fronto orbital fracture with fronto orbital dural and brain laceration with left optic nerve injury. There is also damage on the skull and the brain. due to which, the claimant also suffered loss of memory besides giddiness. Having regard to the above disability suffered by the claimant and taking into consideration of the disability assessed by the Doctor at 60%, the Tribunal had only fixed a sum of Rs.2,000/- as notional income and considering the age of the claimant at the time of accident, by adopting multiplier method, the compensation awarded under the various heads by the Tribunal, in the opinion of this Court, appears to be reasonable. Hence, this Court does not find any reason to interfere with the award passed by the Tribunal. The appeal filed by the appellant/ Insurance company is therefore dismissed as devoid of merits and the award passed by the Tribunal is hereby confirmed.

9.In the result, the appeal filed by the Insurance Company is dismissed by confirming the award dated 05.03.2007 passed by the Motor Accidents Claims Tribunal, Subordinate Court, Sankagiri. It is represented by the learned counsel for the Insurance Company that the entire award amount, as awarded by the Tribunal has already been deposited before the Tribunal. Hence, the claimant is permitted to withdraw the entire award amount by making necessary application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

ebsi/klt

To

1. The Motor Accidents Claims Tribunal,  
Subordinate Court, Sankagiri.

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

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.18437

C.M.A.No.2272 of 2011  
and

M.P.No.1 of 2011

VSNI (CO)  
CS/18/07/2019



WEB COPY