

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 311 of 2015
and M.P. No. 1 of 2015

The Branch Manager,
Oriental Insurance Co. Ltd.,
No.25-C, Arunagiri Complex,
III Floor, Bypass Road,
Hosur 635 109.

.. Appellant/2nd Respondent

Vs.

1. Premkumar ..1st Respondent/Petitioner

2.P.Senthil ..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 19.07.2013, made in M.C.O.P.No.112 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan

For Respondents: Mr.S.Kumaresan (for R1)
Legal aid counsel
No appearance (for R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 19.07.2013, made in M.C.O.P.No.112 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The 1st respondent-claimant filed M.C.O.P.No.112 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.12.2001.

3. According to the 1st respondent, he and others were traveling in TATA Sumo car owned and driven by the 2nd respondent. The 2nd respondent was driving the car in a rash and negligent manner and due to the negligence on the part of the 2nd respondent, the car hit the road-side stone and accident has occurred. The 1st respondent was given first-aid in Government Hospital, Hosur and subsequently he was taken to Annaiya Hospital, Bangalore where he took treatment as in-patient for the injuries sustained by him in the accident. He claimed a sum of Rs.7,00,000/- as compensation, since the accident has occurred due to rash and negligent driving on the part of the 2nd respondent.

4. The appellant filed counter statement and denied the various averments made by the 1st respondent in the claim petition. Though the driver of the TATA Sumo car drove the vehicle with due diligence observing all the rules of the road, he lost control and dashed on a road-side stone and caused the accident. In any event, the 2nd respondent did not possess valid driving license at the time of accident and hence, the appellant is not liable to pay compensation. The total amount claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the 1st respondent examined himself as P.W.1 and examined Dr. M. Devendiran as P.W.2 and marked 9 documents as Exs.P1 to P9. The appellant examined Administrative Officer as R.W.1 and did not mark any documents.

6. The Tribunal considering the pleadings, oral and documentary evidence of the 1st respondent, held that the accident occurred only due to rash and negligent driving by the 2nd respondent. The Tribunal considering the evidence of P.W.2- Doctor and Exs.P2 and P3, awarded a total sum of Rs.6,48,800/- as compensation and directed the appellant to pay the same to the 1st respondent.

7. Against the said award dated 19.07.2013, made in M.C.O.P.No.112 of 2013, the appellant has come out with the present appeal.

8. Learned counsel appearing for the appellant contended that the Tribunal failed to see that Ex.P4 - Insurance Policy is only an Act Policy and did not cover the passenger traveling in the car. The 1st respondent has travelled as a gratuitous passenger and hence, the appellant is not liable to pay compensation. The Tribunal without properly considering the nature of injuries, erred in adopting the multiplier method for awarding compensation. The compensation awarded by the Tribunal is

excessive and prayed for allowing the Civil Miscellaneous Appeal.

9. Per contra, learned counsel appearing for the 1st respondent contended that the appellant did not plead and prove that they are not liable to pay compensation for the injuries sustained by the 1st respondent on the ground that the policy issued by them is only an Act Policy. Due to the injuries sustained by the 1st respondent, he is totally disabled and suffered functional disability. The Tribunal considering the same, rightly adopted multiplier method for awarding compensation. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the Civil Miscellaneous Appeal.

10. Heard learned counsel appearing for the appellant as well as the 1st respondent and perused the materials available on record.

11. From the materials on record, it is seen that the 1st respondent claimed compensation against the appellant and 2nd respondent, alleging that due to rash and negligent driving by the 2nd respondent who is the driver-cum-owner of the vehicle insured with the appellant, the accident has occurred. To substantiate the said contention, the 1st respondent examined himself as P.W.1 and deposed to that effect. He marked copy of the FIR as Ex.P1, which was registered against the 2nd respondent that the 2nd respondent has driven the car in a negligent manner and caused accident. The appellant did not produce any contra evidence to disprove the same. The Tribunal considering the evidence of P.W.1 and in the absence of any rebuttal evidence on the side of the appellant, held that accident has occurred due to rash and negligent driving by the 2nd respondent.

12. As far as liability of the appellant is concerned, it is the contention of the learned counsel for the appellant that the policy issued is only an Act Policy which does not cover liability to the passenger who travel in the car. In the counter statement filed before the Tribunal, the appellant did not take such a stand. Only at the time of arguments, the appellant took a stand that the policy issued by them is an Act Policy and did not cover the passengers who travel in the car at the time of accident. The Tribunal rejected the same on the ground that the appellant has not substantiated the said contention. Further, it is the contention of the appellant that the 2nd respondent did not possess valid driving license at the time of accident. From the materials on record, it is seen that the 2nd respondent was in possession of valid driving license and Ex.P5-driving license has been marked to substantiate the same. The Tribunal considering the evidence of R.W.1, rejected the contention of

the appellant stating that the appellant failed to substantiate their case and fixed liability on the appellant. There is no error in the said finding of the Tribunal.

13.As far as the quantum of compensation is concerned, from the evidence of P.W.1 and P.W.2, Exs.P2, P3 and P9 - wound certificate, discharge summary and disability certificate respectively, it is seen that due to the injuries sustained by the 1st respondent, he is totally incapacitated and suffered functional disability. The Tribunal in such circumstances, reduced the percentage of disability assessed by the Doctor from 50% to 30% in respect of whole body and applied multiplier method to grant compensation, which is in order. The amounts granted by the Tribunal under different heads are not excessive.

14.For the above reason, the appeal is dismissed and the amount awarded by the Tribunal at Rs.6,48,800/- along with interest and costs is confirmed. The appellant is directed to deposit the award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.112 of 2013. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. This Court by an order dated 12.09.2018 has appointed one Mr. S. Kumaresan, Advocate, Old No. 160, Thambu Chetty Street, 3rd Floor, Chennai 600 001, as counsel to defend the case on behalf of the 1st respondent. In view of the same, the appellant is directed to pay a sum of Rs.10,000/- as remuneration to the said Mr. S. Kumaresan, Advocate for conducting the case. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-

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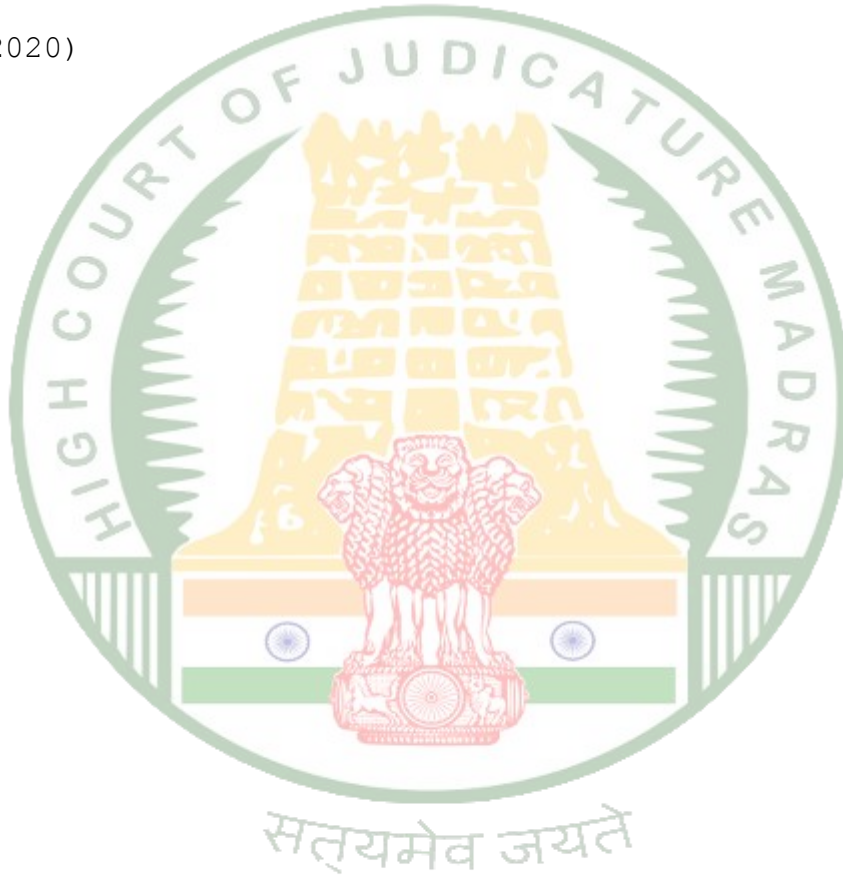
1. The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

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

+1 CC to Mr.S.Kumaresan, Advocate sr 101776
+1 CC to Mr.N.Vijayaraghavan, Advocate sr 102603.

C.M.A.No. 311 of 2015

CA(CO)
SP(31/08/2020)



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