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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos. 6 of 2012 & 1520 of 2013

IN C.M.A.No. 6 of 2012

The New India Assurance Co. Ltd.,
80, Arcot road, Porur,
Chennai - 600 116.

...Appellant

vs.

1.T.Baskaran

2.M.Sivakumar

...Respondents

IN C.M.A.No. 1520 of 2013

T.Baskaran

...Appellant

vs.

1.M.Sivakumar

2.The New India Assurance Co. Ltd.,
80, Arcot road, Porur,
Chennai - 600 116.

...Respondents

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 12.04.2011, in M.C.O.P.No. 491 of 2009, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No.I, Poonamallee.

IN C.M.A.No. 6 of 2012

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.S.Sankaralingam for R1
R2 - Exparte



IN C.M.A.No. 1520 of 2013

For Appellant : Mr. S.Sankaralingam

For Respondents : Mr.R.Sivakumar for R2
R1 - Exparte

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COMMON JUDGMENT

In C.M.A.No.1520 of 2013, the appellant is the claimant in M.C.O.P.No. 491 of 2009, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No.I, Poonamallee. The appellant/claimant filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T Rules seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 24.04.2006.

2. The New India Assurance Company Limited, the second respondent in the above said M.C.O.P. has filed C.M.A.No. 6 of 2012 questioning the liability as well as the quantum of compensation awarded by the Tribunal. The appellant/claimant filed C.M.A.No.1520 of 2013 seeking for enhancement of compensation.

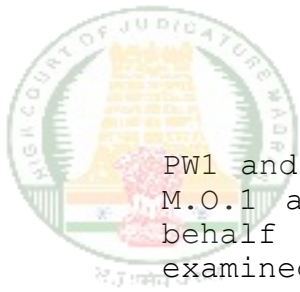
3. For the sake of convenience, the parties are called as per their ranking in the Tribunal.

4. The brief case of the claimant is as follows:

(i) The claimant was aged about 35 years on the date of the accident and he was self-employed as a iron scrap dealer, earning a sum of Rs.10,000/- per month.

(ii) On 24.04.2006, at about 11.40 hours, the claimant was riding his motorcycle bearing Registration No. TN 55 L 1504 on the Kaliyamman Koil street, near Nesapakkam signal. At that time, the first respondent's car bearing Registration No. TN 30 J 7724, driven by its driver, came in a rash and negligent manner and hit the motorcycle. Thereby, the claimant sustained grievous injuries. The claimant claimed Rs.7,15,000/- towards compensation on various heads. But the claim was restricted to Rs.3,00,000/-.

5. The owner of the car bearing Registration No. TN 30 J 7724 was absent before the Tribunal and therefore, he was set ex-parte. The New India Assurance Company Limited contested the claim petition. They filed a petition under Section 170 of the Motor Vehicles Act, 1988 before the Tribunal and the same was allowed. Before, the Tribunal, the injured examined himself as



PW1 and the doctor was examined as PW2 and exhibits P1 to P7 and M.O.1 and M.O.2 were marked on the side of the claimant. On behalf of the Insurance Company, a staff of their company is examined as RW1 and exhibits R1 and R2 were marked.

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6. Dr.Saichandran (PW2), has assessed the partial permanent disability as 30%. However, based upon the disability certificate (Ex.P7), the Tribunal fixed the disability suffered by the claimant as 20%. The Tribunal after going through the oral and documentary evidence placed before the Court, awarded a sum of Rs.45,000/- together with interest at the rate of 7.5% per annum and directed the second respondent to pay the compensation to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the CMA.No. 1520 of 2013 under Section 173 of the Motor Vehicles Act, 1988 seeking for enhancement of compensation.

7. The Insurance Company has taken a specific plea before the Tribunal that, at the time of the accident, the driver of the said car did not possess necessary badge to drive the said car and hence, the Insurance Company cannot be fastened with liability to pay compensation to the claimant and the same was rejected by the Tribunal. Hence, the Insurance Company has preferred CMA.No. 6 of 2012 under Section 173 of the Motor Vehicles Act, 1988.

8. Heard both sides and perused the materials available on record.

9. As stated supra, the Insurance Company has projected a specific case during the cross-examination of the PW1 that, at the time of the accident, the driver of the car did not possess valid driving licence to driver the car. He possessed only the licence to drive 'Light Motor Vehicle' and for driving a commercial taxi, badge is necessary. The Insurance Company have also examined RW1, a staff of their company and marked driving licence extract (Ex.R2).

10. However, in the present settled proposition of law of the Hon'ble Supreme Court in the case of Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017 (2) TN MAC 145 (SC), it has been held that, if a licence is issued to drive 'Light Motor Vehicle', it would also mean specific authorization to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. In the present case, since the said car is weighing less than 7500 kg, the badge endorsement in driving licence is not necessary.



11. Therefore, I find that, there is no merit in considering the plea of the Insurance Company in view of the change of the proposition of law initiated in the above said decision. Accordingly, CMA.No.6 of 2012 is hereby dismissed and consequently, both the owner of the vehicle as well as the Insurance Company are jointly and severally liable to pay compensation to the claimant and the same finding arrived by the Tribunal, on different reasoning is hereby confirmed.

12. CMA.No.1520 of 2013 is filed by the claimant in MCOP.No. 491 of 2009 seeking for enhancement of compensation. Heard the learned counsel on both sides, on the point of quantum of compensation.

13. The learned counsel appearing for the claimant draw the attention of this Court to the accident register (Ex.P3), discharge summary (Ex.P4), prescription (Ex.P5) and disability certificate (Ex.P7) and contended that, the claimant has a crack fracture lat malleolus and the compensation awarded by the Tribunal is too low and therefore, the compensation should be enhanced.

14. Per contra, the learned counsel appearing for the Insurance Company relied on the evidence of Dr.Saichandran (PW2) and submitted that the doctor has assessed the disability as 30% and the Tribunal has fixed the same as 20%. Therefore, he would contend that for the injuries sustained by the first respondent/claimant, the Tribunal has given a fair and reasonable compensation and the same need not be disturbed at this juncture.

15. On perusal of the accident register (Ex.P3), discharge summary (Ex.P4), and disability certificate (Ex.P7) issued by Dr.Saichandran (PW2), it is seen that, the claimant has suffered a crack fracture lat malleolus and the doctor who has clinically examined the injured and issued disability certificate (Ex.P7) based upon X-rays (M.O.1 & M.O.2) has categorically stated that, the claimant has suffered partial permanent disability at 30%. On perusing the injuries suffered by the claimant and the evidence of Dr.Saichandran (PW2), this Court finds that only conservative line of orthopedic treatment was given to the claimant and that no surgery has been taken place for the injuries sustained by him.

16. Therefore, by taking note of the date of the accident, this Court is of the considered view that the disability may be fixed at 25% and that awarding a sum of Rs.1,500/- per percentage of disability would meet the ends of justice. Accordingly, a sum of Rs.37,500/- is awarded towards 'partial permanent disability'. The Tribunal has not awarded any amount



towards 'attender's charges' and 'loss of amenities' and therefore, a sum of Rs.7,000/- in toto is awarded towards the same.

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17. Accordingly, the award of the Tribunal in M.C.O.P.No. 491 of 2009 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Partial permanent disability	NIL	Rs.37,500/-
2.	Loss of income	Rs.5,000/-	Rs. 5,000/-
3.	Transport to Hospital	Rs.5,000/-	Rs.5,000/-
4.	Extra nourishment	Rs.5,000/-	Rs.5,000/-
5.	Loss of amenities and attender's charges	NIL	Rs.7,000/-
6.	Medical expenditure	Rs.5,000/-	Rs.5,000/-
7.	Pain and sufferings	Rs.5,000/-	Rs.5,000/-
8.	Loss of future amenities for his disability	Rs.20,000/-	Rs.20,000/-
	Total	Rs.45,000/-	Rs.89,500/-

The compensation awarded by the Tribunal is enhanced from Rs.45,000/- to Rs.89,500/- which shall carry interest at the rate of 7.5% per annum.

18.In the result,

(i) The C.M.A.No. 1520 of 2013 is partly allowed. No costs.

(ii) The C.M.A.No. 6 of 2012 is dismissed. No costs.

(iii) The compensation amount awarded by the Tribunal is enhanced from Rs.45,000/- to Rs.89,500/-. The order passed by the Tribunal, in respect of the liability is confirmed.

(iv) The claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.



(v) The New India Assurance Company Limited is directed to deposit the enhanced compensation award i.e., Rs.89,500/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 491 of 2009, dated 12.04.2011, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court - I, Poonamallee, within a period of eight weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made, the claimant is at liberty to withdraw the entire compensation amount, in the suitable manner known to law.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The Additional District and Sessions Judge,
Fast Track Court - I, Poonamallee.
2. The Section Officer,
V.R.Section, High Court, Madras.

+2 ccs to M/s.R.Sivakumar, Advocate, S.R.No.24581 and 24580

+1 cc to Mr.Sankaralingam, Advocate, S.R.No.24425

C.M.A.Nos. 6 of 2012
& 1520 of 2013

MG(CO)
SSM(26/09/2019)