

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2692 of 2019

and

Cros.Obj.No.34 of 2019

C.M.A.No.2692 of 2019

Sutharsan ... Appellant / Petitioner

Vs.

1. Sundararaju
2. The Oriental Insurance Co., Ltd.,
KVA Complex, 90-A, Thuraiyur Road,
Namakkal District.
3. Venkatesh
4. The Oriental Insurance Co., Ltd.,
Parimalam Complex, 2nd Floor,
EVN Road, Erode.
5. Sivapalan ... Respondents / Respondents

Cros.Obj.No.34 of 2019

The Oriental Insurance Co., Ltd.,
KVA Complex 90-A,
Thuraiyur Road,
Namakkal District.

... Cross Appellant/Respondent-II

Vs.

1. Sutharsan
2. Sundararaju
3. Venkatesh

4. The Oriental Insurance Co., Ltd.,
Parimalam Complex, 2nd Floor,
EVN Road, Erode.

5. Sivapalan ...Respondents/Petitioner
and Respondents 1,3,4&5

Prayer in C.M.A.No.2692 of 2019 : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 08.02.2019 made in M.C.O.P.No.112 of 2016 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge Court, Erode.

Prayer in Cros.Obj.No.34 of 2019 : Cross Objection has been filed under Order 41 Rule 22 of C.P.C. read with Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 08.02.2019 made in M.C.O.P.No.112 of 2016 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge Court, Erode.

For Appellant in
C.M.A.No.2692 of 2019 : Mr.T.S.Arthanareeswaran
and for the 1st Respondent in
Cross Objection
For R2 in
C.M.A.No.2692 of 2019 : Mr.J.Chandran
and for the Cross Objector
in Cross Objection

Judgment

The Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 08.02.2019 made in M.C.O.P.No.112 of 2016 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge Court, Erode.

2. The brief facts of the case is that on 03.12.2015 at about 11.30 a.m., the appellant, namely, Sutharsan, was travelling as a pillion rider in the Motor cycle (Pulsar) bearing Registration No.TN 86 1996 on the left side of the Erode to Tiruchengode Main Road near Murasukuttai Kuchipalayam. At that time, a Tempo bearing Registration No.TN 28 AB 4630 driven by the driver of the first respondent, namely, Sundararaju, in a rash and negligent manner, dashed against the Motor cycle. As a result, the Sutharsan fell down and sustained fracture injuries on his right and left leg knees and right and left hand wrists. Immediately, he was taken to the Government Headquarters Hospital, Erode, then shifted to the Emergency care hospital,

Erode, and given treatment at ICU Ward for 22 days and at General Ward for 20 days. Thereafter, he took treatment as outpatient in the same hospital and also from the Dr.Senthilnathan, Perundurai Road, Erode. In spite of the treatment given, he had become permanently disabled. Since the accident occurred only due to the rash and negligent driving of the driver of the Sundararaju, he filed a Claim Petition before the Motor Accident Claims Tribunal / Special Subordinate Judge Court, Erode, claiming a sum of Rs.15,00,000/- as compensation under various heads

3. Denying the mode of accident, the second and fourth respondents insurance company have contended that at the place of the accident, a private bus was halted at the northern portion of the East-West Road and passengers of the said bus were being alighted. The rider of the Motor cycle bearing Registration No.TN 86 1996, without noticing the vehicles which were proceeding on the southern portion of the East-West road, dashed against the TATA Medium goods vehicle. Therefore, the accident occurred only due to the negligent driving of the rider of the Motor cycle and there is no negligence on the part of the first respondent's driver. Further, the rider of the Motor cycle did not have valid driving licence at the time of accident, therefore they are not liable to pay any compensation to the appellant/claimant.

4. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellant/claimant and awarded a sum of Rs.13,37,200/- as compensation under the following heads:

S.No.	Particulars	Amount in Rs.
1.	Loss of Income	36,300/-
2.	Transport Expenses	3,000/-
3.	Extra Nourishment	9,000/-
4.	Damages for clothes and Articles	500/-
5.	Medical Expenses	4,81,600/-
6.	Pain and Sufferings	75,000/-
7.	Disability and Loss of Earning Power	7,31,800/-
	Total	13,37,200/-

5. Aggrieved by the award, the appellant/claimant has preferred this appeal before this Court by submitting that before the accident, the appellant was working as a Cooly (Dyeing Work) and he was earning Rs.15,000/- per month. Due to the accident occurred on 03.12.2015, he had sustained grievous injuries and multiple fractures i.e. 1) Right leg knee joint Tibia and fibula fracture 2) Left leg tibia and fibula fracture 3) Left hand wrist fracture and 4) Injury in back side of the head. Therefore, he had taken treatment as an inpatient from 03.12.2015 to 05.01.2016 (32 days) and during the period of treatment, he underwent multiple surgeries, and plates and screws were also fixed on his body. After he was discharged from the hospital, he could not do his work as before and he has lost his entire earning power. While that being the position, the Tribunal has awarded very meagre amount under the heads of Disability, Transport Expenses and Extra Nourishment, and also the Tribunal has not awarded any amount towards Loss of Amenities, Future Medical Expenses and Attender Charges.

6. The second respondent insurance company has filed a Cross Objection against the Judgment and Decree dated 08.02.2019 made in M.C.O.P.No.112 of 2016 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge Court, Erode, by submitting that the Tribunal, without any x-rays and continuous medical treatment records, has awarded an exorbitant compensation to the appellant/claimant by accepting the disability assessed at 55% by PW3 who is not a treated doctor. Hence, the same has to be set aside.

7. Heard the learned counsel on either side and perused the materials availed on record.

8. On perusal of the award dated 08.02.2019 passed in M.C.O.P.No.112 of 2016 by the Motor Accident Claims Tribunal / Special Subordinate Judge Court, Erode, it is observed that though it was stated by the second and fourth respondents insurance company that the accident occurred only due to the negligent driving of the rider of the Motor cycle, they have not chosen to examine the driver of the Tempo, the fifth respondent herein, to prove the same, and even the fifth respondent has not come forward to give evidence. Therefore, the Tribunal has fixed the negligence on the part of the fifth respondent driver. It is further observed that though it was stated by the appellant/claimant that he was working as a Cooly (Dyeing Work) and was earning Rs.15,000/- per month, he has not produced any documentary evidence to prove the same and therefore, the Tribunal has fixed the monthly income of the appellant as Rs.6,500/-, by following the Judgment of this Court reported in

2019 (1) TN MAC - Page 54 (DB) in the case of Andal Vs. Avinav Kannan and others. Moreover, it is observed that since the alleged accident occurred in the year 2015, the Tribunal has taken the appropriate cost inflation index 240 and calculated the monthly income of the appellant at Rs.12,100/- (6,500 x 240 / 129) as notified in the aforesaid Judgment, which is found to be reasonable.

9. It is also observed from the order of the Tribunal that the Tribunal has considered the fact based on the documents i.e. Wound Certificate (Ex.P8), Discharge Summary (Ex.P9) and Case Sheets (Ex.P14) that the petitioner was initially admitted in the Government Headquarters Hospital, Erode, for first aid and then shifted to the Emergency Care Hospital, Erode, where he took treatment as inpatient from 03.12.2015 to 05.01.2016, only after consideration of the same, the Tribunal has awarded a sum of Rs.36,300/- (12,100 x 3) under the head of Loss of Income. Hence, the same cannot be modified. Moreover, it is observed that though the appellant has claimed a compensation of Rs.50,000/- under the head of Transport Expenses, there was no document filed to prove the same. Therefore, the Tribunal has awarded a meagre sum i.e. Rs.3,000/- under the head of Transport Expenses and the same cannot be modified.

10. It is further observed from the order of the Tribunal that the Tribunal only after considering the nature of injuries and period of treatment has awarded a sum of Rs.9,000/- under the head of Extra Nourishment. Therefore, the same cannot be modified. Though the appellant has claimed Rs.10,000/- for the damages caused to his clothes and articles, there was no document to prove the same. Therefore, the Tribunal has awarded a meagre sum i.e. Rs.500/- under the said head and the same cannot be modified. Moreover, it is observed that the appellant/claimant has placed all the documents before the Tribunal to prove the expenses made for the medicines and for the treatment, and the Tribunal has also carefully gone through all the documents i.e. Erode Emergency care hospital bill and medical bills (Ex.P5), Wound certificate (Ex.P8), Discharge Summary (Ex.P9), Scan Receipt (Ex.P11) and Case sheets Ex.P14. After perusing the documents, the Tribunal has found that the appellant had spent nearly 4,50,000/- for the medicines and for the treatment taken in the said hospitals and therefore, the Tribunal has awarded a huge sum i.e. Rs.4,81,600/- under the head of medical expenses including the heads of future medical expenses and Attender charges and the same cannot be modified.

11. It is also observed from the order of the Tribunal that the Tribunal has considered the fact that due to the injuries

sustained, the appellant had undergone surgeries and he had suffered restriction of movement and therefore, has awarded a sum of Rs.75,000/- under the head of pain and sufferings and the same cannot be modified. Though the doctor who examined the appellant assessed 55% disability, the Tribunal after perusing the documents found that the appellant/claimant has already been afflicted with some other ailments and therefore, reduced the disability as 20%. Moreover, it is observed that since the appellant is aged 20 years and he is entitled for 40% future prospectus, the Tribunal has taken the appropriate multiplier 18 and added 40% future prospectus while calculated the compensation towards loss of earning capacity, which arrived at Rs.7,31,800/- i.e. 12,100 (monthly income) + 4,840 (40% future prospectus) x 12 (months) x 20% (disability) x 18 (applicable multiplier according to age) = 7,31,800, which is found to be very much reasonable.

12. In view of the above observations, this Court does not find any error in the award dated 08.02.2019 passed in M.C.O.P.No.112 of 2016 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge Court, Erode. Hence, this Civil Miscellaneous Appeal is dismissed. The second respondent insurance company is directed to deposit the entire award amount as fixed by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the amount, less the amount if any, already withdrawn. No costs. Consequently, the Cross Objection filed by the second respondent insurance company is dismissed.

s/d-
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Sub-Assistant Registrar

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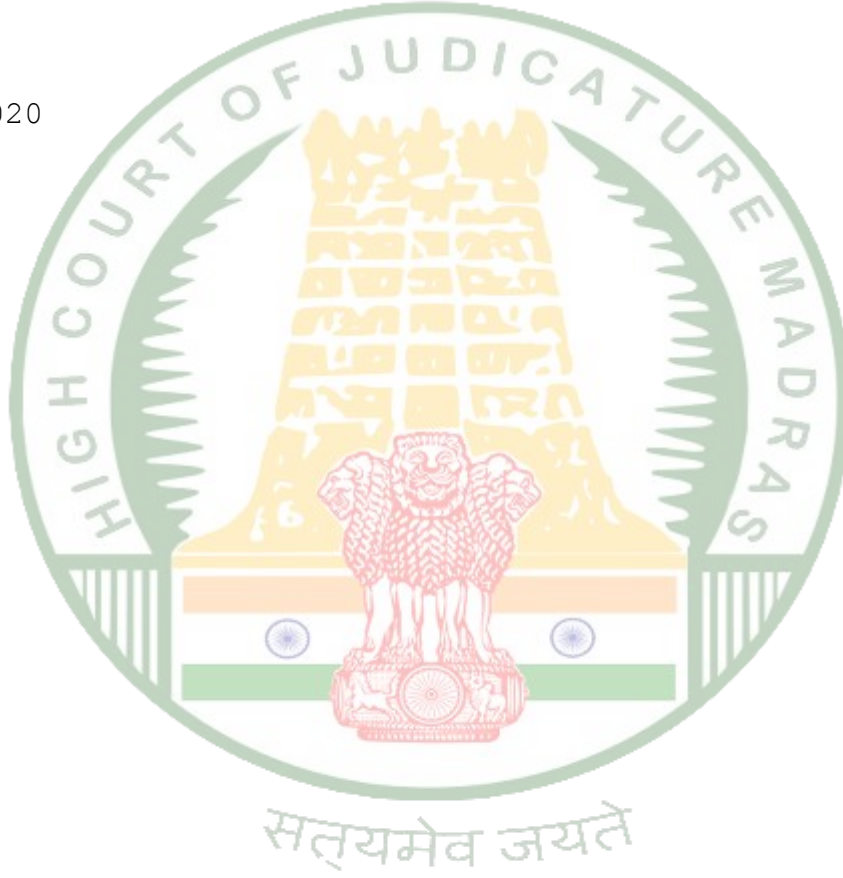
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