



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

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CMA(MD).No.795 of 2017 and
CMP(MD).Nos. 8625 of 2017 and 3062 of 2018

Bajaj Alliance General Insurance Company Limited,
rep. through its Branch Manager,
43/20, Rithardon Road, Veppari,
Chennai.

... Appellant/
2nd respondent

Vs.

1.Kuppayee

... 1st respondent/
Claimant

2.N.V.Devasia

... 2nd respondent/
1st respondent

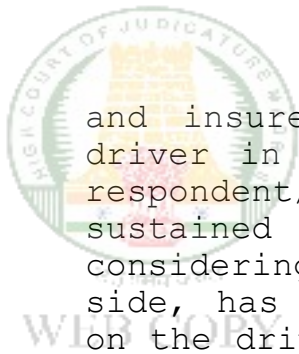
PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 18.04.2017 passed in MCOP.No. 34 of 2012 on the file of the Motor Accidents Claims Tribunal, Kulithalai, insofar as liability and quantum of compensation is concerned.

For Appellant : Mr.V. Sakthivel
For 1st Respondent : Mr.N. Sudhagar Nagaraj

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, against the award, dated 18.04.2017 passed in M.C.O.P.No. 34 of 2012 by the Motor Accidents Claims Tribunal, Kulithalai, challenging both the liability as well as the quantum of compensation.

2. On 11.09.2011 at 10.00 a.m. the first respondent / claimant was driving his Maruthi Omni Car bearing Registration No.TN-10-M-6005 on Trichy-Manapparai Road and while proceeding near Chithanatham Pirivu Road, the road was blocked for repair and the vehicles were diverted to right side road and accordingly, the claimant took diversion. At that time, a car bearing Registration No.TN-10-P-8128, belonging to the 2nd respondent / 1st respondent



and insured with the appellant/2nd respondent was driven by his driver in rash and negligent manner and dashed against the first respondent/claimant, due to which the first respondent/claimant sustained multiple injuries and fractures. The Tribunal, after considering the oral and documentary evidence produced on either side, has fixed 25% negligence on the claimant and 75% negligence on the driver of the 2nd respondent/first respondent car and awarded a sum of Rs.6,31,000/- as total compensation. After deducting 25% of the amount towards negligence on the part of the claimant, the Tribunal directed the appellant/Insurance company to pay Rs.4,59,750/- with 7.5% interest from the date of petition till the date of deposit to the claimant. Now, questioning the liability as well as the quantum, the appellant/Insurance Company has filed this appeal.

3. The learned counsel appearing for the appellant / Insurance Company submitted that the first respondent / claimant drove the vehicle on the wrong side of the road and the FIR has been registered only against the claimant and final report has also been filed against the claimant. By referring to the rough sketch, which has been filed before this Court in the typed set of papers, he further contended that the accident occurred only due to negligence on the part of the first respondent / claimant. Therefore, the entire negligence ought to have been fixed only against the claimant, but the Tribunal has erroneously fixed the negligence on the part of the claimant only 25%. Thus, he prayed to fix entire negligence against the first respondent herein and to exonerate the appellant/Insurance Company from the payment of compensation. Thus, he prayed to allow this appeal.

4. Per contra, the learned counsel appearing for the first respondent / claimant contended that immediately after the accident, the claimant has become unconscious and after treatment, he gained conscious. During that period, the First Information Report was wrongly registered against the claimant and therefore, the same cannot be relied upon. Thus, he prayed to dismiss the appeal.

5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. A perusal of the First Information Report, charge Sheet and deposition of PW.1, would show that the first respondent drove the vehicle on the wrong side. He supposed to have driven the vehicle on the road proceeding from Manaparai to Trichy, on the other hand, he drove the vehicle on the wrong side where the vehicles are moving from Trichy to Manaparai. Therefore, the Court below has come to the conclusion that the first respondent/claimant drove the vehicle on the wrong side. However, it has fixed the liability on the part of the first respondent / claimant for driving the vehicle on the wrong side only 25% and the remaining 75% of the



car, which was insured with the appellant / Insurance company moving the vehicle from Trichy to Manaparai.

7. Admittedly, in this case, independent witness was not examined on either side to speak about the accident. The FIR is not a conclusive proof. Merely based on registration of FIR, the entire liability cannot be fixed on the appellant. The accident is occurred as head on collision. The second respondent's driver could have avoided the accident by applying the break. Therefore, it cannot be construed that the accident had occurred only due to the negligence on the part of the claimant. Hence, fixing the liability 25% and 75% is not proper. The liability should be attributed equally as against driver of both Car drivers. In view of the above, this Court is inclined to re-fix the liability equally on the second respondent's driver as well as the claimant ie., 50% and 50%. Thus, the contributory negligence fixed by the Tribunal is modified and 50% negligence is fixed towards the claimant and another 50% negligence is fixed towards the second respondent's driver.

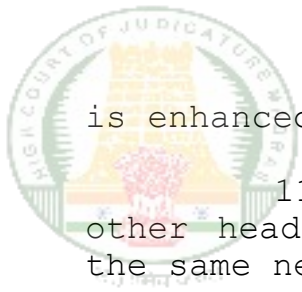
8. In respect of the quantum of compensation, the learned counsel for the appellant contended that the functional disability is only at 17%, whereas the Tribunal has fixed disability as 60% as determined by Doctor and awarded a sum of Rs.1,50,000/- (Rs.2,500/- each percentage) as compensation for the disability. He further contended that the Tribunal should have taken functional disability as 17% and for 17% alone the Tribunal should have determined the compensation, but, the Tribunal has wrongly taken the entire disability fixed by the Doctor ie. 60% and awarded compensation.

9. Admittedly, the claimant has sustained multiple fractures and he underwent several surgeries. During the course of cross examination, PW.2 - Doctor admitted that the claimant has sustained functional disability only at 17%. At the same time, PW2 has categorically stated in his evidence that the claimant could not continue his avocation, due to his disability. Hence, while fixing compensation based on the functional disability, this Court is inclined to apply the multiplier method and re-fix the compensation awarded by the Tribunal for the disability in the manner stated below.

10. The Tribunal has rightly taken Rs.9,000/- per month (including future prospects) as notional income of the claimant. At the time of the accident, the claimant was aged about 28 years and therefore, multiplier number 17 could be applied as held in the Hon'ble Apex Court reported in **2009(2) TNMAC 1 (SC) (Sarla Verma Vs. Delhi Transport Corporation Ltd.,)**. By applying the multiplier method adopted, the loss of income would be as follows:

$$\begin{aligned} &= \text{Rs.}9,000/- \times 12 \times 17 \times 17/100 \\ &= \text{Rs.}3,12,120/- \end{aligned}$$

Accordingly, the amount awarded by the Tribunal towards disability



is enhanced to Rs.3,12,120/- from Rs.1,50,000/-.

11. So far as the amount awarded by the Tribunal on the other heads are concerned, the same are reasonable and therefore, the same need not be interfered with.

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12. Accordingly, the total compensation amount fixed by the Tribunal is enhanced to Rs. 7,93,120/- from Rs.6,31,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit in the manner stated below:

S.No.	Heads	Amount
1	Loss of income due to disability	3,12,120.00
2.	Pain and suffering	30,000.00
3.	Loss of income (3 x Rs.9,000)	27,000.00
4.	Attendant Charges	15,000.00
5.	Nutrition	15,000.00
6.	Transportation	10,000.00
7.	Medical Bills Ex.P2	84,000.00
8.	Medical Bills Ex.P3	3,00,000.00
	Total	7,93,120.00

The appellant / Insurance Company is directed to deposit 50% of the amount now awarded (ie., Rs.3,96,560/-) together with interest at 7.5% per annum from the date of petition till the date of deposit, within a period eight weeks from the date of receipt of a copy of this order. On such deposit, the first respondent / claimant is permitted to withdraw the same on filing necessary application before the Tribunal.

13. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

trp

To

1.The Motor Accidents Claims Tribunal, Kulithalai.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-87597[F] dated 19/09/2019)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-87652[F] dated 19/09/2019)

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KK/SAR/26.12.2019/5P-6C/