

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 07.08.2019

CORAM:

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU**C.M.A. (MD) No.1110 of 2018****and****C.M.P. (MD) .No.11285 of 2018 and 2849 of 2019**

The Manager
Bajaj Alliance General Insurance Company Limited
Door No.11, Office No.6-A
Peoples Park 3rd Floor
Government Arts and College Road
Coimbatore 641 018

... Appellant/
2nd respondent

Vs.

1.Mano ...Respondent/Petitioner
2.Joseph Raj ...Respondent/1st Respondent

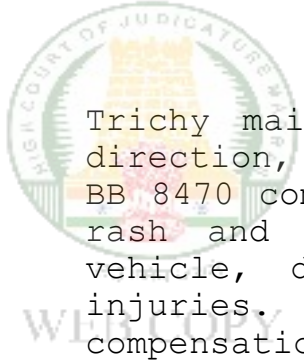
PRAYER: This Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 10.08.2017, made in M.C.O.P.No.1111 of 2016 by the Motor Accident Claims Tribunal / Special Subordinate Judge, Thanjavur.

For appellant : Mr.V.Sakthivel
For respondent 1 : Mr.B.Anandan
For respondent 2 : Mr.K.Mahendran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 10.08.2017, made in M.C.O.P.No.1111 of 2016 by the Motor Accident Claims Tribunal / Special Subordinate Judge, Thanjavur.

2.It is the case of the first respondent/claimant that on 06.08.2016, the Bajaj Pulsar bearing Registration No.TN 49 AP 5365, driven by one Sathishguru and the first respondent/claimant as a pillion rider along with his friend Vinoth, went to raillady, after purchasing things when they return back to the home in the Thanjavur



Trichy main road near Ramanathan Hospital road in the east-west direction, the second respondent's Car bearing Registration No.TN 49 BB 8470 coming in the opposite direction driven by its driver in a rash and negligent manner and dashed against the petitioner's vehicle, due to which, the first respondent/claimant sustained injuries. Hence, the claimant filed a claim petition, claiming compensation of Rs.15,00,000/-. The appellant Insurance Company filed counter denying the manner of accident, contending that on the date of accident, the petitioner was travelling as a pillion rider along with two others, which is a violation of police condition and therefore, the appellant is not liable to pay compensation.

3.On analysis of oral and documentary evidence, the Tribunal fixed negligence on the owner of the Car, the second respondent herein and fastened the liability on the appellant to pay compensation and awarded compensation of Rs.7,14,240/- with interest @ 7.5% per annum from the date of petition till the date of deposit. Aggrieved over the same, this appeal has been filed by the Insurance Company challenging the liability and quantum of compensation.

4. The learned counsel appearing for the first respondent/claimant would submit that the Tribunal has awarded only lesser amount as compensation and therefore, the same may not be interfered with.

5.The learned counsel for the appellant would submit that on the date of accident, the driver of the second respondent herein/first respondent was under intoxication mode, for which, he had also paid fine to the Magistrate Court vide Exhibits P.10 and P.11 and hence, he violated the terms and conditions of the contract of Insurance Company. In support of his contention, he relied upon the Judgment of this Court reported **in 2000(III) CTC 21 in the case of K.Muthu Vs.C.Chandrasekar and another**, wherein it has been stated that the pay and recovery can be ordered only if the insurer had knowledge about intoxication. But in this case, it is stated by the appellant that the insurer is the grandfather. If really the Insurer/ grandfather would have knowledge about that his grandson, namely the second respondent herein is in intoxication mode, he would not have allowed his grandson to drive the Car. Therefore, the aforesaid Judgment is not applicable to the present case on hand. Hence, this Court is not inclined to interfere with liability fastened by the Tribunal.

6.As far as quantum is concerned, the learned counsel for the appellant would refer the Full Bench Judgment of this Court reported **in 2006(2) TN MAC 342 (FB) in the case of Cholan Roadways Corporation Ltd., Vs. Ahmed Thambi and others**, wherein it has been held that the Tribunal while awarding damages should itemize awards under heads viz., pecuniary losses and non pecuniary losses. Permanent disability not to be separately itemized, when loss of earning capacity as also non-pecuniary losses already compensated. But in this case, the Tribunal awarded under the head of permanent



disability and also under the head of loss of functional disability, which is not permissible under the law.

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

8. Perusal of record shows that during the time of accident, the first respondent/claimant was working as a Mason and he had been hospitalized for 17 days. Due to the accident, he was not able to work nearly six months and hence, the Tribunal fixed Rs.10,000/- as monthly income of the claimant. Though the Doctor (P.W.2) has given a certificate that the claimant sustained 44% partial permanent disability(Ex.P.13), the Tribunal has awarded a sum of Rs.1,32,000/- (44XRs.3000) towards partial permanent disability and also awarded a sum of Rs.2,04,000/- towards loss of income, which is unfair and double compensation to the claimant. Therefore, this Court is of the considered view that since the claimant is a Mason, he had been hospitalized for 17 days and he was not able to work nearly six months, if the monthly income is taken as Rs.10,000/-, the loss of income would be arrived at Rs.60,000/- (6XRs.1000).

9. For the above reasons, the amount awarded by the Tribunal under the head of loss of income is reduced from Rs.2,04,000/- to 60,000/-. The award passed by the Tribunal on the other heads need not be interfered with as the same are reasonably awarded by the Tribunal. Thus, the total compensation comes to Rs.5,70,240/-.

10. In view of the above, the award passed by the Tribunal is reduced from Rs.7,14,240/- to Rs.5,70,240/-. So far as the interest is concerned, the rate of interest i.e., 7.5% p.a., fixed by the Tribunal is confirmed. The appellant / Insurance Company is directed to deposit the entire award amount ie., Rs.5,70,240/-, less the amount already deposited with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant shall withdraw the entire award amount with accrued interest and costs, by filing an application before the Tribunal.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)



To

The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Thanjavur.

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+1 CC to Mr.V.SAKTHIVEL, Advocate SR-80215.
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