

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2505 of 2009

and

M.P.No.1 of 2009

The Oriental Insurance Company,  
Pondicherry.

.. Appellant/Respondent-2

Vs.

1.Anbu @ Anbalagan .. 1<sup>st</sup> Respondent/ Petitioner

2.R.Dhandapani ..2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

(R2 remained exparte before the Tribunal.  
Hence, notice dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.07.2006 made in M.C.O.P.No.105 of 2004 on the file of the Motor Accident Claims Tribunal, Sub Court, Chidambaram.

For Appellant : Mr.K.Vinod

For R1 : No appearance

R2 : Exparte (Given up)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 26.07.2006 made in M.C.O.P.No.105 of 2004 on the file of the Motor Accident Claims Tribunal, Sub Court, Chidambaram.

2.The appellant is the 2<sup>nd</sup> respondent in M.C.O.P.No.105 of 2004 on the file of the Motor Accident Claims Tribunal, Sub Court, Chidambaram. The 1<sup>st</sup> respondent filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.12.2003.

3.According to the 1<sup>st</sup> respondent, on 24.12.2003 at 16.30 hours while he and claimant in M.C.O.P.No.107 of 2004 were travelling in the omni car on Sabarimalai - Panali road near

Dindigul, the driver of the lorry belonging to the 2<sup>nd</sup> respondent drove the same from the opposite direction in a rash and negligent manner. On seeing the lorry, the driver of the omni van stopped the vehicle on the extreme left side of the road. But still, the lorry came and dashed against the omni van and caused the accident. In the accident, the 1<sup>st</sup> respondent sustained head injury and bleeding in nose and mouth and fracture in left shoulder and nerves were also cut and sustained grievous injuries in his hip and he could not pass urine. He was admitted in City Hospital, Dindigul for three days and thereafter he was referred to General Hospital, Tanjore, where he took treatment as in-patient for thirteen days and thereafter, he was referred to Madras Hospital. The 1<sup>st</sup> respondent was aged 23 years and was working as T.V.Mechanic in K.R.Electronics, Chidambaram and earning a sum of Rs.7,000/- per month at the time of accident. Due to the injuries sustained by him in the accident, he could not able to do his day-to-day activities and also not able to continue his work as he was doing earlier. Therefore, he filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation against the 2<sup>nd</sup> respondent and appellant-Insurance Company being the owner and insurer of the lorry respectively.

4.The 2<sup>nd</sup> respondent-owner of the lorry remained exparte before the Tribunal.

5.The appellant-Oriental Insurance Company, being the insurer of the lorry belonging to the 2<sup>nd</sup> respondent filed counter statement and denied various averments made by the 1<sup>st</sup> respondent. According to the appellant-Insurance Company, the accident has not occurred as alleged by the 1<sup>st</sup> respondent. According to the appellant-Insurance Company, the driver of the lorry belonging to the 2<sup>nd</sup> respondent drove the same with due care and attention and only the driver of the omni van drove the vehicle in a rash and negligent manner and dashed against the lorry belonging to the 2<sup>nd</sup> respondent and invited the accident. Therefore, the appellant-Insurance Company is not liable to pay any compensation to the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent has to prove that the lorry belonging to the 2<sup>nd</sup> respondent was insured with the appellant-Insurance Company and also the driver of the lorry was having valid driving license at the time of accident. The 1<sup>st</sup> respondent has to prove his age, avocation, income, period of treatment taken and nature of injuries sustained by him by producing valid documents. In any event, the quantum of compensation claimed by the 1<sup>st</sup> respondent is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, one Vijaya Anand (claimant in M.C.O.P.No.107 of 2004) was examined as P.W.1, the 1<sup>st</sup> respondent examined himself as P.W.2, Dr.Balamurugavel was examined as P.W.3 and one Karunanidhi was examined as P.W.4 and 27 documents were marked as Exs.A1 to A27. The appellant-Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 2<sup>nd</sup> respondent and directed the appellant-Insurance Company, being the insurer of the lorry to pay a sum of Rs.5,28,600/- as compensation to the 1<sup>st</sup> respondent.

8.Against the said award dated 26.07.2006 made in M.C.O.P.No.105 of 2004, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing the negligence on the part of the driver of the lorry belonging to the 2<sup>nd</sup> respondent. The Tribunal failed to see that nature of injuries alleged by the 1<sup>st</sup> respondent has no nexus to the disability assessed by P.W.3/Doctor as found in the claim petition and Hospital records. The Tribunal erred in fixing disability as 70% for loss of earning capacity and erred in applying multiplier '18' and awarded a huge sum of Rs.4,53,600/- towards loss of earning capacity. The Tribunal erred in awarding a sum of Rs.50,000/- as compensation towards medical expenses, transportation and other incidental expenses, when the 1<sup>st</sup> respondent has produced bills only for Rs.8463.87 towards medical expenses. The 1<sup>st</sup> respondent failed to prove his avocation and income and that he lost his earning capacity. The Tribunal failed to see that the 1<sup>st</sup> respondent is continuing his work and there is no loss of income and earning power. The Tribunal erred in fixing a sum of Rs.3,000/- per month as notional income of the 1<sup>st</sup> respondent and awarded compensation excessively for loss of earning power and also for loss of income. The compensation awarded by the Tribunal towards pain and suffering at Rs.25,000/- is excessive. The total compensation awarded by the Tribunal is highly excessive and prayed for setting aside the award passed by the Tribunal.

10.Though notice has been served on the 1<sup>st</sup> respondent through paper publication, there is no representation on behalf of him, either in person or through counsel.

11.Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials on record.

12.It is the contention of the 1<sup>st</sup> respondent that while he and claimant in M.C.O.P.No.107 of 2004 were travelling in a omni van, the lorry belonging to the 2<sup>nd</sup> respondent came in a rash and negligent manner and dashed on the omni van and caused the accident. The driver of the omni van died on the spot and the 1<sup>st</sup> respondent and claimant in M.C.O.P.No.107 of 2004 sustained multiple injuries. According to the 1<sup>st</sup> respondent, the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 2<sup>nd</sup> respondent. To prove the said contention, the claimant in M.C.O.P.No.107 of 2004 was examined as P.W.1 and the 1<sup>st</sup> respondent examined himself as P.W.2 and the eye-witnesses to the accident were examined as P.W.3 and P.W.4. The appellant-Insurance Company did not examine the driver of the lorry or any eye-witness to disprove the contention of the 1<sup>st</sup> respondent. The Tribunal considering the evidence of claimant in M.C.O.P.No.107 of 2004 and 1<sup>st</sup> respondent, held that accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 2<sup>nd</sup> respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, the 1<sup>st</sup> respondent claimed that he was working as T.V.Mechanic in K.R.Electronics, Chidambaram and was earning a sum of Rs.7,000/- per month. In the accident, he sustained head injury and bleeding in nose and mouth and fracture in left shoulder and nerves are also cut and sustained grievous injuries in his hip and he could not pass urine. Due to the injuries sustained by him, he could not use his left hand and his left hand has become senseless. The Medical Board of Tanjore Medical College Hospital after examining the 1<sup>st</sup> respondent, assessed the disability of the 1<sup>st</sup> respondent as 70%. P.W.3/Doctor, who is an Ortho Specialist has deposed about the nature of injuries, disability and deposed that the 1<sup>st</sup> respondent could not lift his left hand and pick up things. When the 1<sup>st</sup> respondent appeared before the Tribunal to give evidence, the Tribunal found that left hand of the 1<sup>st</sup> respondent is hanging and 1<sup>st</sup> respondent could not use the same. The Tribunal considering the above materials and observing the 1<sup>st</sup> respondent in the open Court, adopted multiplier method to award compensation for loss of earning capacity. There is no error in the reasoning of the Tribunal for adopting multiplier method. The 1<sup>st</sup> respondent claimed that he was working as T.V.Mechanic in K.R.Electronics, Chidambaram and was earning a sum of Rs.7,000/- per month. The accident occurred

in the year 2003 and a sum of Rs.3,000/- per month fixed by the Tribunal as notional income of the appellant is not excessive. The 1<sup>st</sup> respondent was aged 23 years at the time of accident and as per II Schedule, the multiplier applicable is '17', but the Tribunal applied multiplier '18'. Considering the fact that the 1<sup>st</sup> respondent was not awarded any compensation for loss of amenities, attendant charges, extra nourishment and damages to cloth, multiplier '18' adopted by the Tribunal instead of '17' is not interfered with. The total compensation awarded by the Tribunal is not excessive warranting interference by this Court.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.5,28,600/- along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount, together with interest and costs, less the amount if any already deposited 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.105 of 2004 on the file of the Motor Accident Claims Tribunal, Sub Court, Chidambaram. On such deposit, the 1<sup>st</sup> respondent 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. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

1. Motor Accident Claims Tribunal,  
The Subordinate Judge,  
Chidambaram.

Copy To: The Section Officer,  
VR Section, High Court, Madras.

+1cc to Mr.K.Vinod, Advocate, sr no.20606

C.M.A.No.2505 of 2009

PVS (CO)  
RMP (20/04/2021)