

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.11.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.158 of 2012 &
M.P.No.1 of 2012 &
C.M.P.No.5242 of 2016

- 1.National Insurance Company Limited,
1040-E, And 58, Rajaji Street,
Kangeyam, Erode District.
- 2.National Insurance Company Limited,
1040-E, And 58, Rajaji Street,
Kangeyam, Erode District.
- 3.National Insurance Company Limited,
No.63, Rasi Plaza,
Pradhakshnam Road,
Karur District. Appellants/2,4 & 6
Respondents

vs.

- 1.Selvam alias Selvaraj ...1st Respondent/Claimant
- 2.Subramanian
- 3.Vijaya
- 4.Saravan ...2 to 4 Respondents/ 1,3
& 5 Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MACTOP.No.285 of 2008 dated 03.03.2011 on the file of the Motor Accident Claims Tribunal, Additional Sub Ordinate Judge, Tiruppur.

For Appellants : Mrs.N.B.Surekha
For Respondent 1 : Mr.Lokesh
for Mr.Ma.P.Thangavel

For Respondent 2 to 4: Not ready in notice

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This Appeal has been filed by the Insurance company challenging the impugned award dated 03.03.2011 passed by the Motor Accident Claims Tribunal (Additional Sub Court, Tiruppur) in MCOP.No.285 of 2008.

2. The first respondent/ claimant sustained injuries as a result of an accident caused by three vehicles which were all insured with the Appellants/National Insurance Company Limited having their office at the respective places mentioned in the cause title who were the second, fourth and sixth respondents in the claim petition before the Tribunal. He preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.285 of 2008 for the injuries sustained by him as a result of an accident.

3. The Motor Accident Claims Tribunal under the impugned award directed the Appellants as well as the respondent 2 to 4 jointly and severally to pay the first respondent a compensation of Rs.2,92,000/- together with interest from the date of claim till the date of deposit and costs as detailed hereunder:

Heads	Award Amount (Rs)
Disability compensation	2,28,800/-
Medical expenses	35,222/-
Transportation	3,000/-
Extra nourishment	5,000/-
Pain and suffering	20,000/-
Total	2,92,022/-
Rounded off	2,92,000/-

4. Aggrieved by the impugned award, the Appellants have preferred this Appeal questioning their liability to pay compensation to the first respondent/claimant.

5. Heard Mrs.N.B.Surekha, learned counsel for the Appellants and Mr.Lokesh, learned counsel representing Mr.Ma.P.Thangavel, learned counsel for the first respondent/claimant.

6. The first contention raised by the Appellants is that they are not liable to compensate the claim, since the first respondent/claimant is himself a tort feisor as he has pleaded guilty before the Criminal Court and has admitted his negligence. According to them, the first respondent/claimant

cannot be permitted to make a claim against the Appellants, when he has already pleaded his guilt before the Criminal Court.

7. The second contention raised by the Appellants is that the claim cannot be converted into a workmen compensation claim, since a workmen compensation claim will have to be instituted only before the Commissioner, Workmen's Compensation under the Employee's Compensation Act, 1923.

8. The third contention raised by the Appellants before the Tribunal is that the quantum of compensation awarded by the Tribunal is excessive.

9. Before the Tribunal, the first respondent/claimant has filed nine documents which were marked as Ex.A1 to Ex.A9 and two witnesses were examined namely, the first respondent/claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the Appellants/ Insurance Company, neither any document was filed nor any witness examined before the Tribunal.

10. In the claim petition, the first respondent/claimant has pleaded that he was a driver aged 31 years and was earning Rs.3,300/- per month at the time of the accident. The year of the accident is 2008. The Tribunal has accepted the contention of the first respondent/claimant that he was earning Rs.3,300/- per month at the time of the accident as it found, the said claim to be reasonable. This Court is in agreement with regard to the said finding of the Tribunal.

11. A consistent stand has been taken by the first respondent/claimant as seen from his pleadings as well as from the evidence available on record that he was employed as a driver by the second respondent who is the owner of the insured vehicle bearing registration No.TN39-L-3933. No contra evidence has been produced by the Appellants/insurance company before the Tribunal to disprove the said contention. Therefore, it can be confirmed that there was employer-employee relationship between the owner and the first respondent/claimant.

12. The first contention raised by the Appellants before this Court is that since the first respondent/claimant has pleaded guilty of his negligence before the Criminal Court, they are not liable to compensate him, since he himself was a tortfeasor. Admittedly, the first respondent/claimant is an employee of the insured who is the owner of the vehicle bearing registration NoTN39-L-3933.

13. The learned counsel for the first respondent drew the attention of this court to a Division Bench Judgement of this Court in the case of Oriental Insurance Company vs. Kaliya

Pillai and another reported in 2004 (2) CTC 469 (DB) as well as another decision of the Division Bench Judgment of this Court in the case of M.Anbalagan vs, A.S.Kamal Basha reported in 2015 (2) TNMAC 362 (DB), wherein the respective Division Benches have held that eventhough the insurance company was not liable to compensate under the provision of Motor Vehicles Act, it would be appropriate to assess the compensation under the Workmen's Compensation Act and award the same in favour of the claimants. The respective Division Benches have also held that instead of directing the claimant to go before the Commissioner under the Workmen Compensation Act, 1923 in order to shorten the litigation and also in the interest of justice, permit the claimants to obtain their compensation in the proceedings initiated under section 166 of the Motor Vehicles Act itself. In both the above referred judgments, the respective Division Benches have awarded interest at 12% per annum in accordance with the provisions of Workmen's Compensation Act, 1923. Applying the principles enunciated in the aforesaid two Division Bench Judgments, this Court also permits the first respondent/claimant to claim compensation in the proceedings initiated by him under Section 166 of the Motor Vehicles Act itself instead of directing him to go before the Commissioner appointed under the Workmen's Compensation Act. Therefore, the first and second contentions raised by the Appellants that the first respondent/claimant who himself is a tort feisor is not entitled for compensation from the Appellants is rejected by this Court.

14. With regard to the third contention raised by the Appellants/insurance company in this Appeal that the quantum of compensation awarded by the Tribunal is excessive is concerned, the same is considered by this Court in the following manner:

(a) the Tribunal has rightly fixed the monthly income of the first respondent/claimant who was a driver at Rs.3,300/- based on his own pleadings as found in the claim petition.

(b) under the Workmen's Compensation Act, for a person aged 30 years, the factor to be applied is 207.98. The age of the first respondent/claimant has been proved through Ex.P7 driving licence.

(c) the Doctor has assessed the disability of the first respondent/claimant at 34.3% which was rounded off by the Tribunal to 34%. Considering the nature of injuries sustained by the first respondent/claimant, the disability assessed by the Doctor is a correct assessment.

(d) Applying the formula provided under the Workmen's Compensation Act, 1923, the loss of earning capacity for the

first respondent/claimant will be Rs.1,40,012/- detailed as follows:(3300 x 60/100 x 34/100 x 207.98)

(e) the Tribunal has awarded a sum of Rs.35,222/- as compensation towards medical bills to the first respondent/claimant which is proved through the medical bills Ex.P5 & Ex.P6. even under Section 4(2)(A) of the Workmen's Compensation Act, the first respondent/claimant is entitled for medical expenses. Therefore, the assessment of compensation towards medical expenses at Rs.35,222/- by the Tribunal is confirmed by this Court.

15. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified from Rs.2,92,000/- to Rs.1,75,234/- in the following manner:

Loss of dependency	:	Rs.1,40,012/-
Medical expenses	:	Rs. 35,222/-
		Rs.1,75,234/-

16. The Tribunal has fixed the rate of interest at 7.5% per annum. Since it is a workmen compensation claim, this Court fixes the rate of interest at 12% per annum.

Conclusion:

17. In the result, this appeal is partly allowed by reducing the compensation from Rs.2,92,000/- to Rs.1,75,234/-. The Appellants as well as the respondents 2 to 4 are jointly and severally directed to deposit the modified award amount together with interest at the rate of 12% per annum from the date of claim till the date of deposit and costs after deducting the amount already deposited if any to the credit of MCOP.No.285 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest lying to the credit of MCOP.No.285 of 2008 to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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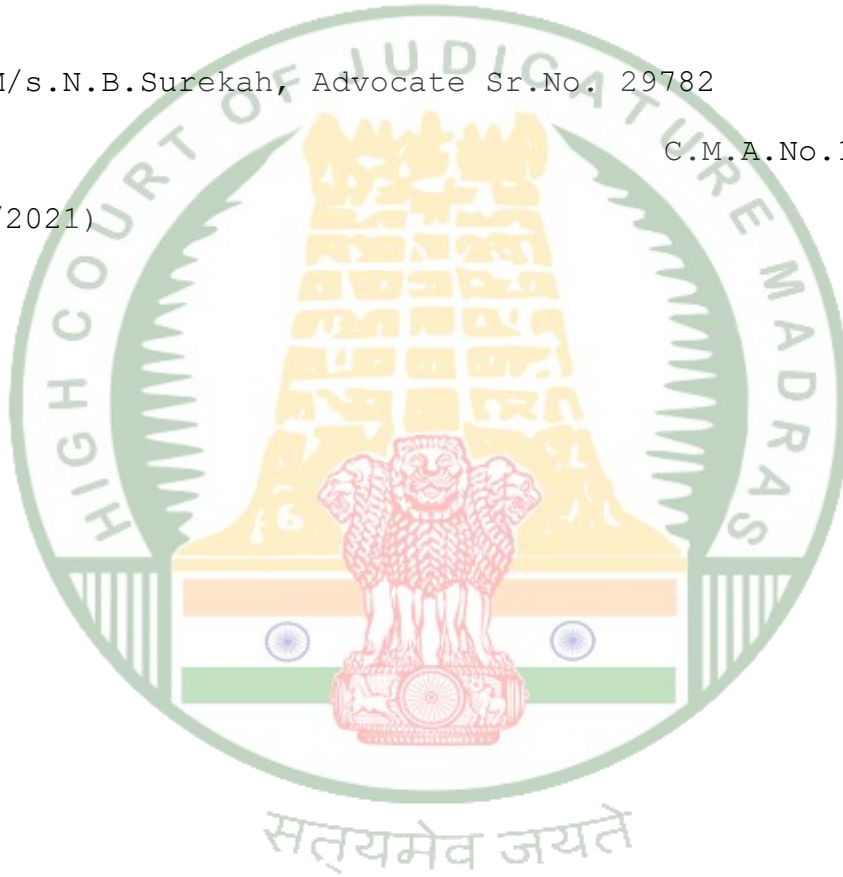
1.The Motor Accidents Claims Tribunal,
Additional Sub Court,
Truppur.

2.The Section Officer,
VR Section, High Court,
Chennai.

+1 cc to M/s.N.B.Surekah, Advocate Sr.No. 29782

C.M.A.No.158 of 2012

RR(CO)
RMP(07/04/2021)



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