

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1947 & 1948 of 2013

C.Vijayakumar, ... Appellant in C.M.A.No.1947/2013/
Petitioner

1.M.Parvatham,
2.S.Muthu ...Appellants in C.M.A.No.1948/2013/
Petitioners

Vs.

1.M/s.Sankar Tex,
16/B, Salem Main Road,
T.Kailasampalayam Post,
Tiruchengode Taluk,
Namakkal District.

2.M/s.United India Insurance Co. Ltd.,
146/N, Kumar Complex, Tiruchengode,
Namakkal District. ... Respondents in both
C.M.A.Nos.1947 & 1948 /2013

Common Prayer: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act 1988, against the order made in M.C.O.P.Nos.165 of 2008 and 369 of 2008 on the file of the Motor Accident Claims Tribunal Cum Subordinate Judge, Tiruchengode dated 31.01.2012 has to be set aside by fixing the liability on the second respondent.

Appellants : M/s.Gayathiri for
Mr.C.Kulanthavel (in Both)

Respondents : Mr.E.P.Senniyangiri for R1 (in Both)
Mrs.I.Malar for R2

Common Judgment

Since the present appeals are interlinked, they are taken up together and a Common Judgment is passed. These Civil Miscellaneous Appeals have been filed against the order dated

31.01.2012 made in M.C.O.P.Nos.165 of 2008 and 369 of 2008 on the file of the Motor Accident Claims Tribunal Cum Subordinate Judge, Tiruchengode.

2. The case of the appellant in C.M.A.No.1947 of 2013 is that, on 19.09.2004 at about 7.30 p.m. the injured/appellant (C.Vijayakumar) was returning from Morepalayam to Tiruchengode in a bullet motor cycle with his friends, namely Raja and Kumar. The appellant was driving the motor cycle. When they are coming near sizing owners association, weighbridge in Salem to Tiruchengode Main Road, the driver of the Mahindra van bearing Reg.No.TN.28/T.6943 coming from the opposite direction drove the vehicle in a rash and negligent manner with high speed and hit against the bullet motor cycle, due to which, they were thrown away. All the three persons sustained grievous injuries and they were taken to Government Hospital at Tiruchengode and given first aid treatment. Then, the appellant was shifted to L.K.M. Hospital at Erode and was admitted as an inpatient and given treatment. His both bones in his right leg were broken. He was treated by Dr.S.Natesan M.S.Ortho from 19.09.2004 to 18.11.2004 as inpatient for his injuries. At that time the appellant was taking treatment as outpatient for his injuries. The appellant has suffered very much with physical pain and mental agony due to this accident. The appellant has spent more than Rs.75,000/- towards medical expenses. The accident had occurred only due to the rash and negligent driving of the driver of the above said Mahindra Van. The said accident was reported to the Tiruchengode Town Police Station and a case was registered in Cr.No.670 of 2004 under Section 279,337 and 338 IPC, against the driver of the Mahindra Van. At the time of accident, he was working in a powerloom factory and was earning a sum of Rs.5,000/- per month. Due to the injuries sustained in the accident, he became permanently disabled. Hence, he filed a petition in M.C.O.P.No.295/165 of 2005 before the Court of Sub-Judge, Namakkal, claiming Rs.3,00,000/- as compensation from the respondents.

2.(a). The case of the appellants in C.M.A.No.1948 of 2013 is that, in the same accident one Raja was died, due to the rash and negligent driving of the driver of the above said Mahindra Van. At the time of accident the deceased was aged only 25 years and was working as a manager in TST Bus transport company with good health and was earning monthly salary of Rs.5,000/- per month. Due to the death of the appellant's son they were affected very much financially and mentally. Hence, the deceased parents filed a petition in M.C.O.P.No.365/369 of 2005 before the Court of Sub-Judge, Namakkal, claiming Rs.22,00,000/- as compensation from the respondents.

3. Denying the allegations of the appellants, the second respondents contended that the bullet Motor Cycle alone had driven the same in a rash and negligent manner without observing the motor vehicle rules by carrying more than two persons, which is in violation of traffic rules and without any valid driving licence and dashed against the Mahindra van belonging to the 1st respondent. He further contended that the driver of the Mahindra Van Reg.No.TN 28/T 6943 belonging to the 1st respondent does not have a driving licence at the time of accident and thereby the policy condition was violated by the 1st respondent by allowing a person to drive his vehicle who does not hold a valid driving licence and the motor cycle in the said accident did not have any valid insurance. Therefore the 2nd respondent is not liable to pay any compensation to the appellants. Further, it has been stated that the alleged age and income of the respondents are not true and the amount of compensation claimed is highly excessive.

4. During the trial, on the side of the appellant, PW1 to PW6 were examined and Exs.P1 to P13 were marked. On the side of the respondent, RW1 & RW2 were examined and Exs.R1 to R7 were marked. On Court side document Ex.X1 and Ex.X2 were marked and M.O.1 was marked.

5. The Tribunal after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellants in M.C.O.P.NOs. 165 and 369 of 2008 and awarded Rs.1,67,300/- & Rs.4,64,000/- respectively as compensation as follows :

(i) In M.C.O.P.NO. 165 of 2008

S.No.	Description	Amount
1.	Loss of Earnings	25,000
	Loss of Earnings 2000 X 6	12,000
2.	Transport to Hospital	2,000
3.	Extra Nourishment	5,000
4.	Medical Expenses	29,300
5.	Pain and Sufferings	25,000
6.	Permanent Disability	68,000
7.	Damages to cloth and articles	1,000
	Total	1,67,300

(ii) In M.C.O.P.NO. 369 of 2008

S.No.	Description	Amount
1.	Loss of dependency	4,32,000
2.	Funeral expenses	10,000
3.	Transport to Hospital	5,000
4.	Love and affection	15,000
5.	Damages to cloth and articles	2,000
	Total	4,64,000

6. Aggrieved by the awards, the appellants have filed these appeals before this Court stating that the Tribunal has erred in respect of fixation of liability against the respondents. The Tribunal erred in coming to the conclusion that the 2nd respondent is not liable to pay the compensation to the claimant and the same needs interference.

7. Heard the learned counsel for the appellant and the learned counsel for the respondents, and perused the materials available on record.

8. On perusal of the award dated 31.01.2012 passed by the Motor Accident Claims Tribunal Cum Subordinate Judge, Tiruchengode, it is observed that the Tribunal, on perusal of Ex.P1, First Information Report has found that the injured and deceased travelled in the bullet Motor Cycle without observing the motor vehicle rules by carrying more than two persons in violation of traffic rules and without any valid driving licence. At the time of accident, the Tribunal has fixed liability on the 1st respondent only and has not fixed any liability on the 2nd respondent/Insurance company, due to the violation of Motor vehicle rules. The said observation made by the Tribunal is perfectly valid in the eye of law and needs no interference. However, with regard to the liability, which was fixed only on the 1st respondent needs interference. Since, three persons have travelled in the motor cycle, which is in violation of the Motor Vehicles Act, 50% liability is hereby fixed on the appellants also. Hence, the 1st respondent hereby directed to deposit a sum of Rs.83,650/- & Rs.2,32,000/- respectively, (Amount awarded by the Tribunal Rs.1,67,300/- & Rs.4,64,000/- (less 50%) Rs.83,650/- & Rs.2,32,000/- respectively). If already deposited, the 1st respondent is permitted to withdraw the 50% of his share by filing proper application before the Tribunal. If not already deposited, the 1st respondent is directed to deposit the 50% of his share.

9. In the result, these Civil Miscellaneous Appeals are disposed of. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal Cum Subordinate Judge,
Tiruchengode,

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

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.13890

+1cc to Mr.T.Ravichandran, Advocate SR.No.13703

C.M.A.Nos.1947 & 1948 of 2013

SR(CO)
GMY(19/04/2021)



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