

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.1993 of 2013
and M.P. No. 1 of 2013

Branch Manager,
The New India Assurance Co. Ltd.,
Kumaran Shopping Complex,
Kumaran Road,
Tirupur. ... Appellant/2nd Respondent

Vs.

1.Salomanraj ... 1st Respondent/Claimant
2.Loganathan ... 2nd Respondent/
1st Respondent
(R2 was set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.09.2011, made in M.C.O.P. No.328 of 2007, on the file of the Additional District cum Sub Court, (Motor Accident Claims Tribunal), Coimbatore at Tirupur.

For Appellant : Mr. R. Sivakumar

For Respondent : Mr. Lokesh (For R1)
for M/s. Ma.P.Thangavel

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed against the award dated 30.09.2011, made in M.C.O.P. No.328 of 2007, on the file of the Additional District cum Sub Court, (Motor Accident Claims Tribunal), Coimbatore at Tirupur.

2.The appellant is the 2nd respondent in M.C.O.P. No.328 of 2007, on the file of the Additional District cum Sub Court, (Motor Accident Claims Tribunal), Coimbatore at Tirupur. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.02.2007.

3. According to the 1st respondent, on the date of accident, at about 13.45 hours, he was travelling in the Moped bearing Registration No. TN-37-AE-9637 as pillion rider from East to West in the 60 feet road in front of Balaji Battery, Tirupur. At that time, the driver of the 2nd respondent Maruti Car bearing Registration No. TN-39-AL-2828, drove the same in a rash and negligent manner, without adhering to the traffic regulations and dashed against the Moped and caused the accident. The accident occurred due to rash and negligent driving by the driver of the Maruti Car belonging to the 2nd respondent. In the accident, he sustained grievous and multiple injuries. The appellant as insurer of the vehicle belonging to the 2nd respondent and 2nd respondent as Owner of the offending vehicle are liable to pay compensation.

4. The 2nd respondent remained exparte before the Tribunal.

5. The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the accident did not occur as alleged by the 1st respondent. Initially, in the FIR registered by the Police, the Registration Number of the offending vehicle was not mentioned and as the 1st respondent was not aware of the identity of the vehicle, he deliberately included the vehicle Registration Number as TN-39-AL-2828, only with an intention to claim compensation. The 1st respondent has to prove his avocation, income and disability suffered to claim compensation. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1 and examined three witnesses as P.W.2 to P.W.4 and marked 8 documents as Exs.P1 to P8. The appellant examined two witnesses as R.W.1 and R.W.2, but did not let in any documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence and failure on the part of the appellant-Insurance Company to examine the driver of the Maruti Car or any independent witness, held that the appellant as insurer of the vehicle is liable to pay a sum of Rs.5,17,200/- as compensation to the 1st respondent.

8. Against the said award dated 30.09.2011, made in M.C.O.P. No.328 of 2007, the appellant-Insurance Company has come out with the present appeal.

9. Learned counsel appearing for the appellant-Insurance Company contended that the Maruti Car bearing Registration

No.TN-39-AL-2828 was not involved in the accident. The rider of the Moped gave a complaint based on which, FIR was registered. The complainant has not mentioned the registration number of the Car in the complaint. It is the duty of the 1st respondent to prove that the Car belonging to the 2nd respondent, insured with the appellant was involved and responsible for the accident. The 1st respondent did not examine any eye-witness to prove that the Maruti Car bearing Registration No.TN-39-AL-2828 was involved in the accident. The learned counsel further contended that the 1st respondent is not clear whether he travelled as a pillion rider or whether he was riding the Moped. In the FIR, it was mentioned that one Manikandan drove the Moped. The 1st respondent has not explained as to how he got the registration number of the vehicle. The Tribunal erred in fixing the income of the 1st respondent as Rs.5,000/- per month and applied multiplier method. The Tribunal ought to have granted compensation only for the injuries. The Tribunal erroneously fixed the percentage of disability as 42% and awarded compensation and prayed for setting aside the award of the Tribunal.

10. The learned counsel appearing for the 1st respondent / claimant made his submissions in support of the award passed by the Tribunal.

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

12. In the claim petition, the 1st respondent has stated that he was travelling as a pillion rider at the time of accident. He deposed to that effect as P.W.1. The 1st respondent in his cross-examination has stated that he was riding the Moped. In the FIR, it has been stated that the complainant viz., Manikandan drove the vehicle. As far as registration number of the vehicle involved in the accident is concerned, it is the case of the 1st respondent as well as the complainant that at the time of accident, there was no registration number. The 1st respondent has produced the copy of the policy. The R.W.2 - Official of the appellant admitted that in the policy, no registration number was mentioned and only chassis number, type of car, name and address of the owner alone was mentioned. The learned Judge verified the policy, RC book and found the name and address of the owner and chassis number mentioned in the policy tallied with name and address mentioned in the RC book. This clearly shows that the appellant has issued the policy even before the registration of the Maruti Zen Car involved in the accident, mentioning the type of car, chassis number and name and address of the 2nd respondent, owner of the car. The Tribunal considering the above materials has held that the Car bearing Registration No.TN-39-AL-2828 belonging to the 2nd respondent, insured with the appellant was involved in the accident and the

driver of the Car is responsible for the accident. The appellant has not examined the 2nd respondent or driver of the Car or any other eye witness. In view of the above materials, there is no reason to interfere with the award of the Tribunal, fixing negligence on the driver of the 2nd respondent and liability on the appellant.

13. As far as the quantum of compensation is concerned, the 1st respondent has contended that he was a Tailor and doing business in Iron and was earning a sum of Rs.7,000/- per month. The accident is of the year 2007. The Tribunal fixed a sum of Rs.5,000/- as monthly income of the 1st respondent. The monthly income fixed by the Tribunal is not excessive as contended by the learned counsel appearing for the appellant. The 1st respondent contended that he suffered grievous injuries viz., pedax bone fracture, right toe fracture, left leg, right thigh, left chest and injuries all over the body and took treatment as in-patient at Revathi Hospital, Tirupur, CMC Hospital, Coimbatore and Dhayarammal Poly Clinic, Coimbatore. The 1st respondent examined P.W.3- Doctor who treated him. P.W.3- Doctor deposed the nature of injuries sustained by the 1st respondent, treatment given and contended that the 1st respondent suffered 44% of disability. In the absence of any contra evidence let in by the appellant to disprove the same, the Tribunal fixed the disability suffered by the 1st respondent as 42% and applied multiplier method. Considering the nature of work done by the 1st respondent, evidence of P.W.3 - Doctor and nature of injuries and disability suffered, the Tribunal has awarded compensation under different heads, which are not excessive. There is no error in the award of the Tribunal warranting interference by this Court.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.5,17,200/- along with interest and costs is confirmed. The appellant is directed to deposit the award amount along with interest and costs, 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.328 of 2007. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

gsa
To

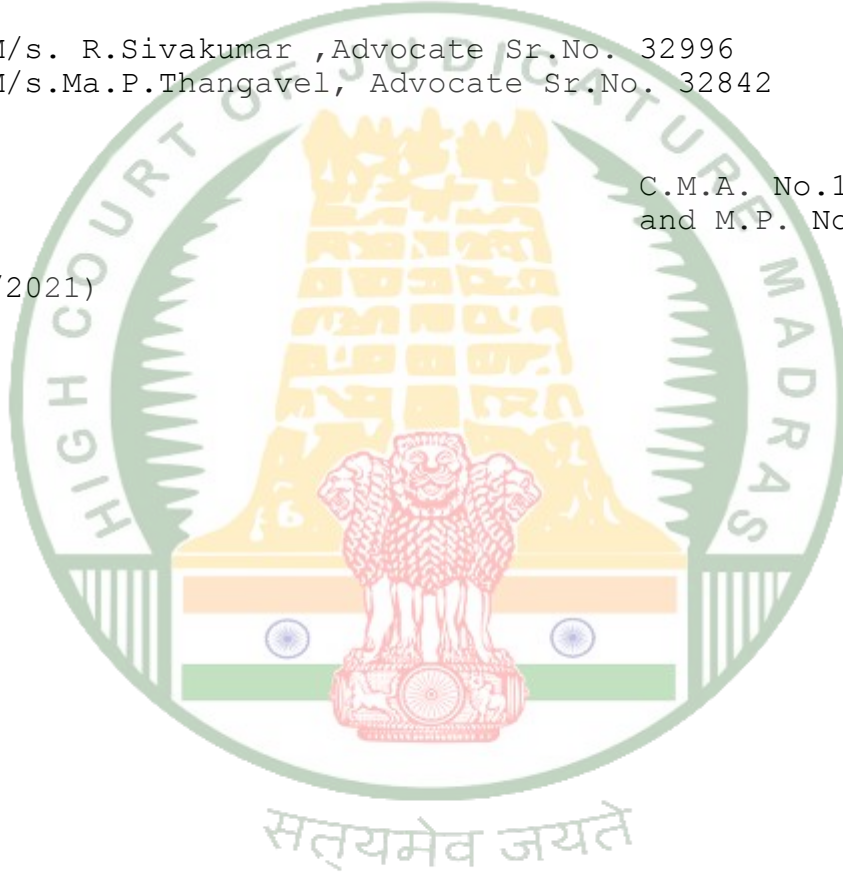
1.The Additional District cum Subordinate Judge,
(Motor Accident Claims Tribunal),
Coimbatore at Tirupur.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to M/s. R.Sivakumar ,Advocate Sr.No. 32996
+1 cc to M/s.Ma.P.Thangavel, Advocate Sr.No. 32842

C.M.A. No.1993 of 2013
and M.P. No. 1 of 2013

VBA (CO)
RMP (26/04/2021)



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