WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3275 of 2012

Venkatesan @ Maayan
rep by his friend and wife Deepa ... Appellant/Petitioner

Vs.

1. E.Anand

2. The Branch Manager,
The Oriental Insurance Co. Ltd.,
R.S.Road, Shoba TSM Complex,
Pallakad Town, Pallakad Taluk,
Kerala State. ... Respondents
(1st Respondent 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 made in MCOP.No.59 of 2010 dated 09.06.2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Rasipuram.

For Appellant : Mr.Ma.P.Thangavel.

For Respondents : R1 - Exparte.
Mr.J.Chandran for R2.

J U D G M E N T

The appellant is the claimant filed this appeal for enhancement, against the judgment and decree made in MCOP.No.59 of 2010 dated 09.06.2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Rasipuram.

2. The case of the claimant/appellant is that on 19.02.2010 the claimant was driving the indica car bearing Reg.No.TN23-A-6367 from Coimbatore to Vaniyambadi, at that time a 407 van bearing Reg.No.TN33-AP-6102 was driven by its driver in a rash and negligent manner and dashed against the indica car, thereby the claimant sustained head injuries and went to coma stage. At that time of accident the injured was 27years and earning a sum of Rs.15,000/-p.m. A criminal complaint was registered against the driver of the 407 van in Sithedu police station. The first respondent is the owner of the van and the second respondent is

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the insurer of the van. As the injured is in coma stage, the wife has filed the claim petition on behalf of the injured person.

3. The Second respondent/insurance company filed counter inter alia stating that the negligence on the part of the indica car driver alone was the cause for the accident. Both the vehicle dashed in opposite direction and the liability is on both the drivers. The non-joinder of owner of the car and their insurer are necessary parties. The driver of the 407van has no valid licence to drove the vehicle and hence the insurer is not liable to pay the compensation.

4. In order to prove the case of the claimant, the claimant examined PW1 to PW4 and marked Ex.P1 to Ex.P18. No oral and documentary evidence has been adduced on the side of the respondents.

5. Heard both sides and perused the materials available on record.

6. Upon considering the evidence of eyewitness PW2, the Tribunal held that the accident was occurred due to rash and negligent driving of 407 van driver. Ex.P4/charge sheet filed by Sub Inspector of Police, Chittode police station against the van driver under Section 279, 337 and 338 IPC, the van driver admitted the offence and paid the fine on the file of the Judicial Magistrate No.III, Erode. PW1/wife of the claimant has stated that due to the accident claimant sustained severe head injuries and because of head injuries, claimant is not in a position to understand the thing and he is unable to take care of himself. PW3/Doctor who issued the disability certificate has stated that due to the injury, the claimant has become non-communicable, not responding to the oral commands, not able to speak and has stiff joints with difficulty in moving the limbs. The said finding is based upon the evidence and unassailable. The quantum of compensation is under challenge.

7. During the course of argument the learned counsel appearing for the appellant/claimant circulated a Division Bench judgment of this Court dated 14.02.2012 between the same set of parties. The appeal therein has been filed by the insurance company challenging the quantum of compensation awarded by the Tribunal. The Division Bench of this Court has decided the issue and dismissed the claim of the insurance company, the operative portion of the judgment is reproduced hereunder :-

> "16. Claimant was working as driver and he would have been earned not less than Rs.15,000/- per month. In her evidence, PW1 has stated that her husband was

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

earning the income of more than Rs.15,000/- per month. Though the income stated by PW1 is slightly higher, being a driver, Claimant would have earned not less than Rs.7,500/- per month. However, Tribunal has taken the income only at Rs.5,000/- per month which we find very fair and reasonable and the same is confirmed. At the time of accident, the Claimant was aged 27 years and Tribunal adopted multiplier "17" which is also confirmed. Taking the income at Rs.5,000/- per month and adopting multiplier "17", Tribunal has awarded Rs.9,18,000/- (Rs.5000/- x 90% x 12 x 17 = Rs.9,18,000/-) for "permanent disability" and the same is confirmed.

17. As pointed out earlier, Claimant has taken treatment in various hospitals and continues to take treatment. Based upon Ex.P9-series medical bills, Tribunal has awarded Rs.4,00,000/- for "medical expenses". For the rest of his life, Claimant has to depend on others, Tribunal has awarded Rs.25,000/- for "attender charges"; Rs.20,000/- for "future medical expenses"; Rs.50,000/- for "loss of marital life"; Rs.10,000/- for "transport charges" and Rs.25,000/- for "pain and suffering". The quantum of compensation awarded in those conventional heads are quite reasonable and the same are maintained. Thus the total compensation of Rs.14,48,000/- awarded by the Tribunal is just and reasonable. We find no reason warranting interference.

18. In the result, the appeal is dismissed. No costs. Consequently, connected M.P. is closed.

It was stated before us that as per the order in M.P. No.1 of 2011 dated 08.11.2011, Appellant-Insurance Company has deposited the entire amount. 1st Respondent-Claimant is permitted to withdraw the entire compensation amount along with accrued interest immediately after the receipt of copy of this Judgment."

8. The Division Bench of this Court has discussed in large in the appeal filed by the insurance company. Hence, this Court is of the view, the judicial propriety demands that the single judge should follow the verdict of the Division Bench. Accordingly, this Court is not inclined to go into the merits of the appeal filed by the appellant/claimant.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

9. In the result, the civil miscellaneous appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

tsh

To

The Motor Accident Claims Tribunal,
Sub Court, Rasipuram.

Copy To

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

+1cc to Mr.J.Chandran , Advocate SR.No.7775

C.M.A.No.3275 of 2012

VSN II(CO)
GMY(08/09/2021)

https://hcservices.ecourts.gov.in/hcservices/