

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3466 of 2013

and

M.P.No.01 of 2013

M/s.Iffco Tokio General Insurance Co.Ltd.,
ITGI-STRATEGIC Business Unit, Coimbatore,
Tulsi Chambers, III Floor,
No.195, T.V.Swami Road (West),
R.S.Puram, Coimbatore ...Appellant/3rd Respondent

Vs

1.Mr.P.Manoharan
2.M.Suresh
3.M.Mani ...Respondents/Petitioner and RR1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order made in M.C.O.P.No.351 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Bhavani, dated 14.03.2013.

For Appellants : Mr.E.Rajadurai

For R1 : Mr.Ma.P.Thangavel

For R2 & R3 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 14.03.2013 made in M.C.O.P.No.351 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Bhavani.

2. The first respondent herein is the claimant in M.C.O.P.No.351 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Bhavani. He filed the above petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained in the accident that took place on 01.12.2009.

3. The case of the prosecution is that on 01.12.2009 at about 09.15PM., when the first respondent was riding his Hero Honda CD 100 Bike bearing Regn.No.TN-27-C-0253 from south to north direction on Bhavani to Anthiyur Road in front of Shiva Hotel along with one Kokila, who was sitting as a pillion rider in the said vehicle, the second respondent drove the Mahindra Pick Up Van bearing Regn.No.TN-36-J-7411, which came from the opposite direction in such a rash and negligent manner, and hit against the first respondent's vehicle. Due to the sudden hit, the first respondent and his relative Kokila were thrown away and they sustained multiple grievous injuries all over their bodies.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Mahindra Pick Up Van belonging to the third respondent and directed the appellant herein to pay a sum of Rs.3,39,200/- as compensation to the claimant.

5. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal to set aside the compensation.

6. The learned counsel for the appellant would submit that the Court below has erred in ordering pay and recovery, in a case where the vehicle was operated without a fitness certificate and thereby violating provisions of Motor Vehicles Act. The Court below failed to appreciate that the use of vehicle without fitness certificate is a serious violation of Motor Vehicles Act and hence, the pay and recovery principle cannot be applied in such a case. The Tribunal has misconstrued the legal position with regard to pay and recovery rule and applied it in the present case and also completely misconstrued the policy terms, especially the avoidance clause, which has no relevance for the present case on hand. Hence, the learned counsel for the appellant prays to allow the appeal.

7. The learned counsel for the first respondent would submit that the respondent specifically denies all the allegations in the claim petition. The accident was caused due to utter negligence on the part of the injured. Hence, the learned counsel for the first respondent prays to dismiss the appeal.

8. Heard the learned counsel for the appellant and the learned counsel appearing for the first respondent and perused the materials available on record.

9. It is seen that the injured was working as a driver and was earning Rs.7,000/- per month, but, there is no proof for the same and the Court below has fixed Rs.3,000/- per month as his income. It is true that if the first respondent had sustained grievous injuries in the accident, it would have certainly prevented him to attend his work for a period of atleast 3 months and in view of the same, a sum of Rs.9,000/- is granted for 'loss of earning'. Analysing the nature of injury and also the period, which prevented the claimant from attending work, this Court is of the view that the amount awarded by the Tribunal is just and reasonable and the same is confirmed hereby. Further, the learned tribunal awarded a sum of Rs.88,000/-, Rs.20,000/-, Rs.3,000/- Rs.3,000/-, Rs.1,000/-, and Rs.1,000/- towards "Disability", "Pain and sufferings", "Medical bills", "Extra-nourishment", "Transportation" and "Damages to clothes", which are also very just and reasonable and need not be altered. The compensation awarded by the Court below are as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	88,000/-	88,000/-	Confirmed
2.	Pain and Sufferings	20,000/-	20,000/-	Confirmed
3	Medical Bills	3,000/-	3,000/-	Confirmed
4.	Extra-nourishment	3,000/-	3,000/-	Confirmed
5	Transportation	1,000/-	1,000/-	Confirmed
6	Damages to clothes	1,000/-	1,000/-	Confirmed
7	Loss of earnings	9,000/-	9,000/-	Confirmed
Total		Rs.1,25,000/-	1,25,000/-	Confirmed

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The first respondent is entitled to get compensation of Rs.1,25,000/- from the third respondent with interest at 7.5% per annum, on the said amount from the date of application to the date of deposit along with proportionate costs within 30 days from the date of this order. The appellant is directed to pay the compensation amount awarded by the

Tribunal and recover the same from the third respondent herein.
Consequently, connected Miscellaneous Petition stands closed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

sbn

To

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

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

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.16779

+1cc to M/s.M.B.Gopalan Associates, Advocate SR.No.16912

C.M.A.No.3466 of 2013
and
M.P.No.01 of 2013

MP (CO)
GMY (20/11/2020)



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