

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.62 of 2013
and M.P.No.1 of 2013

- 1.The United India Insurance Company Limited,
Rep. by its Divisional Manager,
having its at J.B.M.Building,
1st Floor, Ramchand, Kotagiri,
The Nilgiris.
- 2.The United India Insurance Company Limited,
rep. by its Divisional Manager,
having office at State Bank Lane Ootacamund,
The Nilgiris.Appellants/RR 3 & 4

vs.

- 1.K.Alexander Barnabas
- 2.V.Nandhakumar
- 3.B.RamanRespondents/Petitioner and RR1, 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.06.2009 made in M.C.O.P.No.18 of 2008 on the file of the Motor Accidents Claims Tribunal (District Judge), The Nilgiris at Udhagamandalam.

For Appellants : Mr.J.Chandran

For Respondents : Mr.B.Balachander for R1
RR2, 3 No Appearance

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Appellants Insurance Company challenging the Award dated 23.06.2009 passed by the Motor Accident Claims Tribunal (District Judge), Nilgiris at Udhagamandalam in M.C.O.P.No.18 of 2008.

2.The Appellants Insurance Company have filed this appeal challenging the adverse finding of negligence on the part of the driver of the insured vehicle by the Tribunal and they have also

challenged the quantum of compensation awarded by the Tribunal.

3. Heard Mr.J.Chandran, learned counsel for the Appellants and Mr.B.Balachander, learned counsel for the first respondent.

4. Before the Tribunal, the claimant has filed 13 documents which were marked as Exs.A1 to A13 and the claimant himself was examined as PW1.

5. Insofar as the adverse finding of negligence as against the driver of the insured vehicle given by the Tribunal is concerned, the Tribunal has duly considered the testimony of PW1 as well as the FIR which was marked as Ex.A1. PW1 has deposed that on 18.03.2007 while he was driving a Maruthi Omni Van bearing Registration No.TN 43 A 1671 along with his family members from Coimbatore to Udhagamandalam and while he was nearing Sethupattai at 4.30 hours, the van insured with the Appellant bearing Registration No.TN 43 A 9535 came from the opposite direction in a rash and negligent manner and dashed against the Maruthi Omni Van driven by the claimant.

6. The Tribunal has also taken note of the fact that the author of FIR (Ex.A1) who is the owner of the Van bearing Registration No.TN 43 A 9535 insured with the Appellant, has failed to enter into the witness box to prove the contents of the FIR. The Tribunal has therefore observed that the contention of the Appellants that only due to the fault of the claimant who was the driver of Maruthi Omni Van bearing Registration No.TN 43 A 1671 cannot be accepted.

7. Admittedly, the FIR has been registered at the behest of the owner of the offending vehicle (insured vehicle) who is not an independent person. Further, as rightly observed by the Tribunal, he has also not been examined as a witness. If he was examined as a witness, the claimant would have had the benefit of cross examining him in order to elicit the truth. When there is positive assertion by the claimant that only due to the fault of the driver of the insured van bearing Registration No.TN 43 A 9535, the accident had happened and when the said assertion has not been disproved by the Appellant Insurance Company before the Tribunal by adducing any contra evidence, the Tribunal has rightly accepted the pleadings of the claimant as well as the oral testimony of PW1 by holding that the accident had happened only due to the negligence of the driver of the vehicle insured with the Appellant. Insofar as accident claims are concerned, the claims are adjudicated by preponderance of probability. Therefore, the contention of the Appellant that the cause of the accident is only on the part of the claimant cannot be accepted by this Court.

8.The details of the compensation awarded by the Tribunal are as follows:

Period of treatment	-	Rs.45,000/-
Pain and suffering	-	Rs.25,000/-
Mental shock and agony	-	Rs.5,000/-
Medical expenses	-	Rs.92,000/-
Two months salary	-	Rs.45,000/- (Rs.45,196/- Rounded off Rs.45,000/-)
Transport to hospital	-	Rs.5,000/-
Lodging	-	Rs.1,500/-
Extra nourishment	-	Rs.5,000/-
Damages to clothing	-	Rs.2,000/-

Total		Rs.2,25,500/-

9.The claimant has substantiated his claim through Ex.A1 - medical bills, Ex.A2 - transport bills, Ex.A3 - medical bills, Ex.A4 lodging bill, Ex.A7- discharge summary from the Hospital and Ex.A9 - photocopy of salary certificate. The claimant was aged 48 years and working as a Teacher at Breeks Memorial School, Ootacamund.

10.The nature of the injuries sustained by the claimant are as follows:

(a)Right arm: swelling, deformity, abnormal mobility crepitus, tenderness present on middle third level.

(b)Right foreare: 2x2 cm lacerated wound present on dorsal aspect proximal third level

(c)Right thigh, swelling, deformity, abnormal mobility crepitus, tenderness present on middle third lower third level.

(d)Swelling, crepitus, tenderness present over anterior aspect knee.

11.The Tribunal has rightly accepted the salary certificate of the claimant which was marked as Ex.A9 which reveals that the claimant was drawing a salary of Rs.23,598/- as a PG Teacher. The Tribunal has awarded a sum of Rs.25,000/- as compensation towards pain and suffering to the claimant even though in his claim petition he had claimed Rs.50,000/- towards the said head.

12.Considering the nature of injuries sustained by the claimant, the compensation awarded by the Tribunal towards pain and suffering is a just compensation. The Tribunal has awarded another sum of Rs.5,000/- towards mental shock and agony which is also a reasonable sum in the considered view of this Court.

The Tribunal has awarded Rs.92,000/- towards medical expenses which is supported by Ex.A3 medical bills. Since no documentary evidence was produced in support of the claim for future treatment, the Tribunal has rightly rejected the same. The Tribunal after considering the nature of the injuries and the period of hospitalization has awarded a compensation of Rs.45,000/- as compensation towards loss of income during the period of treatment calculated on the basis that the Appellant would not have been able to go to work for a period of two months. This Court is in agreement with the said assessment.

13.Since the claimant has not produced any documentary evidence to prove that he had engaged the service of attender during the period of his treatment, the Tribunal has rightly rejected the compensation towards attender charges. The Tribunal after giving due consideration to the nature of injuries and his period of hospitalization has awarded a sum of Rs.5,000/- towards transportation cost, Rs.1,500 towards lodging, Rs.5,000/- towards extra nourishment and Rs.2,000/- towards damages to clothing. The compensation awarded by the Tribunal under the said heads is not an excessive one and therefore, this Court confirms the same. In all, the total compensation awarded by the Tribunal under the impugned Award amounting Rs.2,25,500/- to the claimant is a just compensation which does not call for any interference by this Court.

14.For the foregoing reasons, this appeal filed by the Insurance Company does not deserve any merit.

15.Accordingly, the appeal shall stand dismissed. The first Appellant Insurance Company and the respondents 2 and 3 are directed to deposit the entire amount awarded by the Tribunal, after deducting the amount already deposited if any, together with interest at the rate of 7.5% from the date of the claim till the date of realization to the credit of M.C.O.P.No.18 of 2008 on the file of the Motor Accidents Claims Tribunal (District Judge), Nilgiris at Udhagamandalam, 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 directly to the bank account of the first respondent /claimant, through RTGS, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

pam

To

1.The Motor Accidents Claims Tribunal
(District Judge),
The Nilgiris at Udhagamandalam.

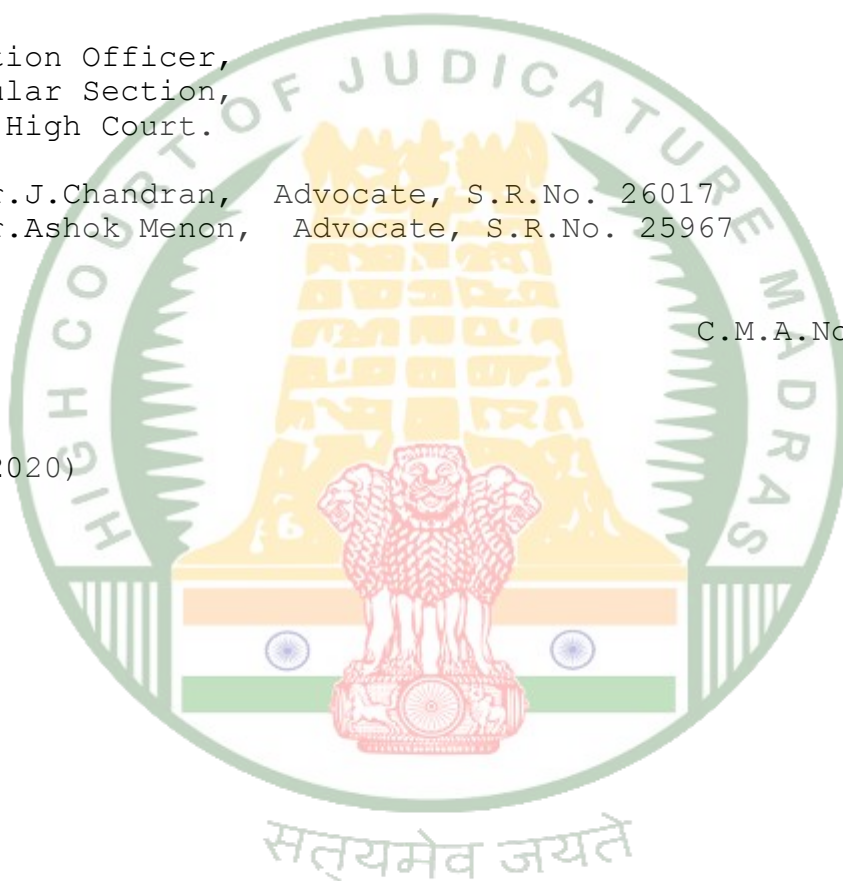
Copy To

The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.J.Chandran, Advocate, S.R.No. 26017
+1cc to Mr.Ashok Menon, Advocate, S.R.No. 25967

C.M.A.No.62 of 2013

VSN II (CO)
GN(27/08/2020)



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