

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3039 of 2019
and C.M.P.No.16554 of 2019

United India Insurance Co. Ltd.,
19/2A, Junction Main Road,
Salem - 636 004.

.... Appellant /2nd Respondent

Vs.

1.Kannan
2.Sekar

.....Respondents/Petitioners/
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.10.2018 made in M.C.O.P.No.806 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court No.2, Salem.

For Appellant : Ms.I.Malar
For R1 : Not Ready in Notice
For R2 : Exparte in the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 24.10.2018 made in M.C.O.P.No.806 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court No.2, Salem.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.806 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court No.2, Salem. The 1st respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in a road accident that took place on 24.02.2014.

3.According to the 1st respondent, on the date of the accident i.e. on 24.02.2014, at about 09.00 P.M., while the 1st respondent was riding his motorcycle in Omalur to Salem Main Road, near Swarnapuri arch, a speeding auto driven by its driver

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in a rash and negligent manner, without giving any signal, suddenly applied break, dashed against the 1st respondent's motorcycle and caused the accident, as a result of which, the 1st respondent sustained injuries all over the body. Therefore, the 1st respondent has filed above claim petition for claiming compensation against the 2nd respondent and the appellant.

4.The 2nd respondent owner of the auto remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made by the 1st respondent and contended that the driver of the auto did not possess a valid driving license and badge at the time of accident. He possess only license endorsing LMV instead LMV Transport license to drive the auto. It is a violation of policy conditions. Hence, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent.

6.Before the Tribunal, the 1st respondent, examined himself as P.W.1 and marked nine documents as Exs.P1 to P9. On the side of the appellant/Insurance Company one Manimegalai/Accountant, Salem West Regional Transport Office was examined as R.W.1 and one Sekar/Assistant Police, Salem Transport was examined as R.W.2 and marked one document as Ex.R1 and Ex.C1 disability certificate issued by Medical Board, was marked through Court.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the auto belonging to the 2nd respondent and directed the appellant/Insurance Company being the insurer of the said auto, to pay a sum of Rs.2,32,006/- as compensation to the 1st respondent.

8.Against the said award dated 24.10.2018 made in M.C.O.P.No.806 of 2014, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant raised various grounds in the appeal with regard to negligence as well as quantum of compensation awarded by the Tribunal. At the time of arguments, the learned counsel for the appellant restricted her arguments with regard to award of the Tribunal granting compensation by applying multiplier method. The learned counsel appearing for the appellant/Insurance Company contended that the injuries sustained by the 1st respondent did not affect his normal work as well as there is no loss of earning power. The

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Tribunal without properly appreciating Ex.C1, applied multiplier method and granted excessive amounts as compensation and prayed for setting aside the award of the Tribunal.

10.Heard, the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

11.The only point to be considered in this appeal is whether the Tribunal was justified in applying multiplier method. Ex.C1 disability certificate is the relevant document issued by the Medical Board. Medical Board after examining the 1st respondent has certified that the 1st respondent has suffered 18% permanent disability. Medical Board also mentioned the following disability suffered by the 1st respondent ;

- a) He has difficulty in sitting crossed legged and squatting
- b) pain at right knee
- c) Malunion of right femur

The Tribunal considering the nature of injuries sustained by the 1st respondent and disability certificate issued by the Medical Board, reduced percentage of disability fixed by the Medical Board and fixed as 9% permanent functional disability. The Tribunal fixed monthly income of the 1st respondent as Rs.6,500/- and applied multiplier method. The appellant did not let in any evidence to disprove that the 1st respondent suffered 9% functional disability. In view of the same, there is no perversity in the award of the Tribunal by applying multiplier method warranting interference by this Court.

12.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.2,32,006/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, 1st respondent is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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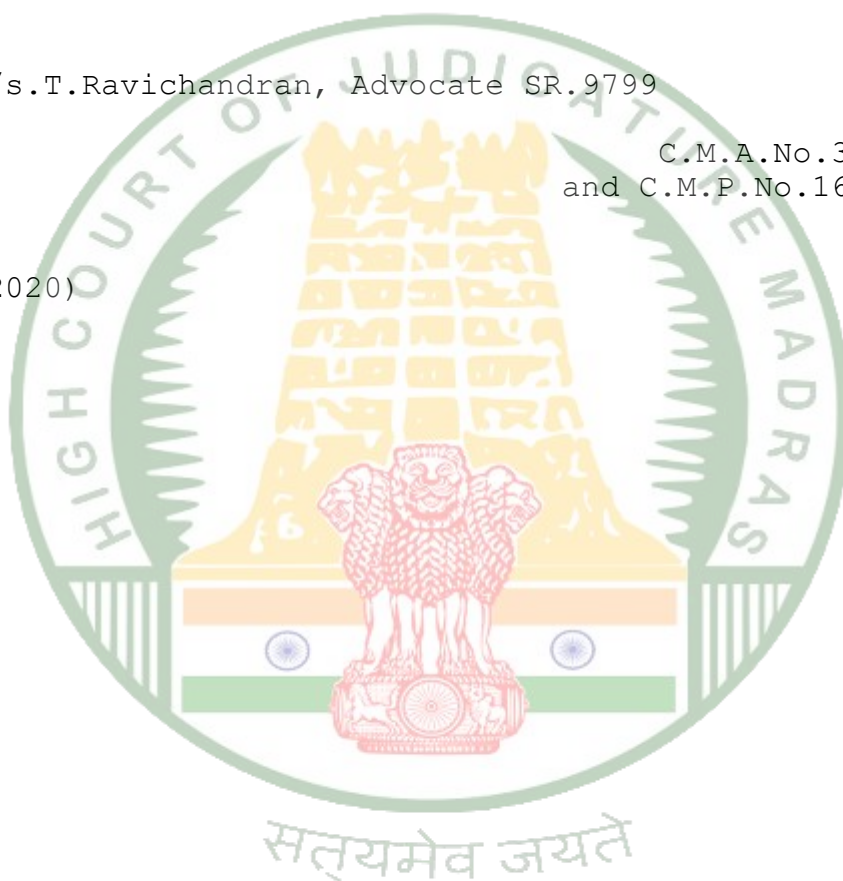
1.The Special Subordinate Judge No.2,
Motor Accident Claims Tribunal
Salem.

2.The Section Officer
VR Section
High Court
Madras.

+1cc to M/s.T.Ravichandran, Advocate SR.9799

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