

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1291 of 2014 and  
M.P.No.1 of 2014

The Divisional Manager

The Oriental Insurance Company Ltd.,

Vellore

.... Appellant/Respondents

Vs

1. S.Ananth @ Saravanan

...1<sup>st</sup> Respondent/ Petitioner

2. M.Revathi

...2<sup>nd</sup> Respondents/1<sup>st</sup> respondent

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P.No.252 of 2009 on the file of Motor Accidents Claims Tribunal (Sub Court) Cheyyar dated 23.08.2013.

For Appellant : Mrs. Eleveera Ravindran

For Respondents : Served - No appearance

J U D G M E N T

The appellant herein, who is the Insurance Company has preferred this Civil Miscellaneous Appeal against the Judgment and Decree made in M.C.O.P.No.252 of 2009 on the file of Motor Accidents Claims Tribunal(learned Subordinate Judge) Cheyyar dated 23.08.2013.

2. The case of the respondents / claimants is that on 11.01.2009 at about 15.15 hrs, while the 1st respondent was riding his Hero Honda Splender plus bearing regn. No.TN-25-U-8893 at Cheyyar -Arcot Road, Opposite to R.C.M.School, at that time, a lorry bearing Regn. No.TN-23-AZ-5736 was driven by its driver in a rash and negligent manner from north to south at a great speed and dashed against the 1st respondent's vehicle, thereby the 1st respondent sustained grievous injuries and he could not even breath properly. The driver of the lorry is

responsible for the accident. The 1st respondent had suffered grievous injuries all over the body and before the accident, he was taking tuition to the students and earning a sum of Rs.10,000/- per month. Since the 2nd respondent is the owner and the appellant being insurer of the lorry, they are jointly and severally liable to pay compensation.

3. Per contra, the appellant / Insurance Company has filed a counter before the court below denying all the averments stated by the claimants. It is the case of the appellant that the amount claimed by the claimants are very excessive and in any event, the 2nd respondent, owner of the lorry is responsible and she is liable to pay the compensation to the 1st respondent.

4. Considering the pleadings, counter pleadings, evidences and the documents produced on record, the Tribunal had awarded a total compensation of Rs.7,31,630/- to the 2nd respondent and the same was directed to be paid to the 2nd respondent by the appellant and the 1st respondent. The amount awarded by the Tribunal is tabulated as under:-

| Sl.No | Name of Heads         | Amount awarded by Tribunal |
|-------|-----------------------|----------------------------|
| 1     | Loss of Income        | Rs.30,000/-                |
| 2     | Transport to hospital | Rs.6,000/-                 |
| 3     | Extra Nourishment     | Rs.7,000/-                 |
| 4     | Damage to Clothing    | Rs.1,000/-                 |
|       | Medical Expenses      | Rs.4,45,270/-              |
| 5     | Pain and Sufferings   | Rs.35,000/-                |
| 6     | Permanent Disability  | Rs.2,07,360/-              |
| TOTAL |                       | Rs.7,31,630/-              |

5. Aggrieved against the same and challenging the amount awarded by the court below, the appellant / Insurance Company is before this Court.

6. The learned counsel for the appellant contended that the amount awarded by the Tribunal is very exorbitant and without any basis. The tribunal having rejected the disability assessed at 49% for the alleged injuries, went wrong in treating the injury as a case of amputation and accepted that the claimant suffered from a disability of 16%. There was no evidence to prove the avocation or income or reduction in income of the claimant / 1st respondent due to the alleged injuries, she pleaded.

7. Though Court notice was served on the respondents 1 and 2 on 20.05.2014 and their names have been printed in the cause list, there is no appearance on behalf of them either in-person or through learned counsel.

8. Heard the learned counsel for the appellant and perused the documents placed on record.

9. On the perusal of the order passed by the Tribunal dated 23.08.2013, it is seen that since the contents of the FIR corroborates with the evidence of the 1st respondent, P.W.1., and that there is no contra evidence against the said evidence of P.W.1, 1st respondent, the Tribunal has rightly stated that the driver of the lorry [owned by the 2nd respondent] had caused accident by driving the vehicle rashly and negligently. Further, the Tribunal has also rightly held that the 2nd respondent, being owner of the lorry and the appellant being insurer of the lorry are held responsible for compensating the 1st respondent. That apart, the Tribunal by taking note of Ex.P.2, Accident Register, has rightly fixed the age of the 1st respondent as 27 and taking shelter of Exs.P8 to P.10, the Tribunal has also rightly fixed the income of the 1st respondent as Rs.6,000/-.

10. Further, this Court finds some force in the submission of the learned counsel for the appellant because of the reason that when the Ex.P.2, Accident Register issued by the Government Hospital, Cheyyar shows that the 1st respondent had sustained injuries due to the accident and the same reads to the effect that 'he had taken treatment as outpatient at Govt., Hospital, Cheyyar on 11.01.2009. He had suffered contusion right eye 2) Multiple injury right ankle, abrasion on the chest', the Tribunal has adopted multiplier method, which in the considered opinion of this Court needs to be interfered with. In the absence of any evidence to show that the 1st respondent / claimant had suffered permanent disability and unable to proceed with his avocation, only disability factor can be awarded. In order to substantiate the same, P.W.2, Dr.Balakrishnan was examined and he has given disability at 49%. This Court by taking note of evidence of P.W.2, viz., Dr.Balakrishnan and Ex.P.11, Disability Certificate issued by him, hereby is inclined to fix the disability sustained by the 1st respondent as 45% and by awarding a sum of Rs.3,000/- per disability, [45% X 3000] a sum of Rs.1,35,000/- is hereby awarded towards disability and a sum of Rs.2,07,360/- awarded by the Tribunal under the head of permanent disability is hereby deleted and except the said modification, the amount awarded by the Tribunal under all the other heads stand confirmed. Thus, the amount awarded by this Court is modified as follows:-

| Sl .N o | Name of Heads         | Amount awarded by Tribunal | Amount awarded by this Court | Amount confirmed / granted / rejected |
|---------|-----------------------|----------------------------|------------------------------|---------------------------------------|
| 1       | Loss of Income        | Rs.30,000 /-               | Rs.30,000                    | Confirmed                             |
| 2       | Transport to hospital | Rs.6,000/-                 | Rs.6,000                     | Confirmed                             |
| 3       | Extra Nourishment     | Rs.7,000/-                 | Rs.7,000                     | Confirmed                             |
| 4       | Damage to Clothing    | Rs.1,000/-                 | Rs.1,000                     | Confirmed                             |
| 5       | Medical Expenses      | Rs.4,45,270/-              | Rs.4,45,270                  | Confirmed                             |
| 6       | Pain and Sufferings   | Rs.35,000 /-               | Rs.35,000                    | Confirmed                             |
| 7       | Permanent Disability  | Rs.2,07,360/-              | -                            | Rejected                              |
| 8       | Disability            | -                          | Rs.1,35,000                  | Granted                               |
| TOTAL   |                       | Rs.7,31,630/-              | Rs.6,59,270                  | Reduced by Rs.72,360/-                |

11. Accordingly, the Appellant / Insurance company is directed to deposit the said amount of Rs.6,59,270/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, if not already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the 1st respondent is permitted to withdraw the amount by filing an appropriate application before the Court concerned, less the amount if any, already withdrawn. Further, if the appellant has already deposited the entire amount awarded by the Tribunal, as per the conditional order made in C.M.A.No.1291 of 2014 and M.P.No.1 of 2014 dated 21.04.2014, then, the appellant is also permitted to withdraw the balance amount, i.e., less the amount awarded by this Court.

In the result, the present Civil Miscellaneous Appeal is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Motor Accidents Claims Tribunal (Sub Court)  
Cheyyar
2. The Section Officer,  
VR Section,  
Madras High Court, Chennai.

+lcc to Mrs.Elveera, Advocate SR.No. 9130

C.M.A.No.1291 of 2014 and  
M.P.No.1 of 2014

vr1 co  
A.SK(10/11/2020)



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