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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2487 of 2014

and

M.P.No.1 of 2014

The Oriental Insurance Company Limited,
Spencer Towers, IV Floor,
No.770 - A, Anna Salai,
Chennai - 600 002.

.. Appellant/2nd Respondent

Vs.

1.Elavarasan

.. 1st Respondent/Petitioner

2.Sukumari Chandrasekar

.. 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.04.2014 made in M.C.O.P.No.4571 of 2010 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.Vinod
for Ms.Elveera Ravindran
For R1 : Mr.K.Varadha Kamaraj

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 01.04.2014 made in M.C.O.P.No.4571 of 2010 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

3.The appellant is the 2nd respondent in M.C.O.P.No.4571 of 2010 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai. The 1st respondent filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.08.2008.

4.According to 1st respondent, on 29.08.2008 at about 22.30 hours, while he was going to near his auto at Rajiv Gandhi Salai opposite to Madhyakailash bus stop, the driver of the Ambassador



Car bearing Registration No.TN 01 M 6435 belonging to 2nd respondent drove the same in a rash and negligent manner and dashed against the 1st respondent and caused the accident. In the accident, the 1st respondent sustained multiple grievous injuries all over his body. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the Ambassador Car respectively.

5.The 2nd respondent-owner of the Ambassador Car remained exparte before the Tribunal.

6.The appellant-Insurance Company, being the insurer of the Ambassador Car filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the accident has not occurred as alleged by the 1st respondent. The 1st respondent has to prove that the 2nd respondent's car was involved in the accident and also the Ambassador Car was having valid Registration Certificate, Insurance, Permit and other vehicular records at the time of accident. The 1st respondent has to prove that the driver of the 2nd respondent's car was possessing valid driving license at the time of accident. Further, the driver of the 2nd respondent's Ambassador Car was under the influence of alcohol at the time of accident. The accident has occurred only due to rash and negligent driving by the driver of the car bearing Registration No.TN 01 M 6435 and the accident has not occurred as alleged by the 1st respondent. The 1st respondent also contributed to the accident and hence, contributory negligence has to be fixed on the part of the 1st respondent. The appellant denied the age, avocation, income, nature of injuries and treatment taken by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

7.The appellant filed additional counter statement and denied various averments made by the 1st respondent. According to appellant there was previous enmity between the 1st respondent and driver of the 2nd respondent's car. Therefore, the driver of the 2nd respondent's Ambassador Car attempted to murder the 1st respondent and a complaint was also booked under Section 307 of I.P.C. Further, the Medical Legal Certificate issued by the Life Line Hospital as well as AR copy issued by the Stanley Hospital, Chennai categorically reveals that manner of accident was not under RTA. Therefore, there was no negligence on the part of the driver of the 2nd respondent's Ambassador Car. In view of the



same, the claim petition filed under Motor Vehicles Act is not maintainable and prayed for dismissal of the claim petition.

8. Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.M.Saravana Bavanantham was examined as P.W.2 and 8 documents were marked as Exs.P1 to P8. The appellant-Insurance Company did not let in any oral and documentary evidence.

9. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to 2nd respondent and directed the appellant to pay a sum of Rs.9,59,100/- as compensation to the 1st respondent.

10. Against the said award dated 01.04.2014 made in M.C.O.P.No.4571 of 2010, the appellant has come out with the present appeal.

11. The learned counsel appearing for the appellant contended that the 1st respondent has not alleged any negligence on the part of the driver of the Ambassador Car belonging to 2nd respondent. On the other hand, it is the contention of the 1st respondent that it was only an attempt to murder. When there is no rashness and negligence on the part of the driver of the car, the claim petition filed under Section 166 of Motor Vehicles Act is not maintainable. Even if the 1st respondent filed claim petition under Section 163(A) of the Motor Vehicles Act, the same is not maintainable as income of the 1st respondent is more than Rs.40,000/- per annum. The Tribunal erred in holding that 1st respondent suffered 50% disability and 45% loss of earning power and erred in applying multiplier method and awarded compensation when there is no assessment of disability for whole body and there is no assessment for functional disability. The compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

12. Per contra, the learned counsel appearing for the 1st respondent contended that accident has occurred only due to rash and negligent driving by the driver of the car belonging to 2nd respondent. In addition to rash and negligent driving, the driver of the car tried to murder the 1st respondent. The driver of the car was acquitted in Criminal Case lodged against him for attempt to murder. The Tribunal considering the evidence let in before it has concluded that accident has occurred only due to

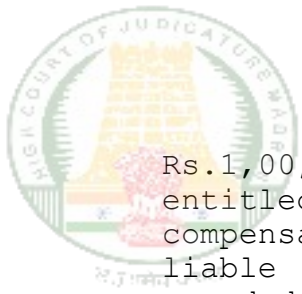


rash and negligent driving by the driver of the car belonging to 2nd respondent. The 1st respondent is an Auto Driver and was earning a sum of Rs.500/- per day. In view of the nature of injuries and disability, he lost his earning power and his income is reduced. The 1st respondent has taken treatment as inpatient for 78 days in three different spells and underwent surgeries. Therefore, the amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

13. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

14. From the materials available on record, it is seen that it is the contention of the 1st respondent that accident has occurred involving the Ambassador Car belonging to 2nd respondent due to rash and negligent driving by the driver of the car. The 1st respondent has given complaint against the driver of the 2nd respondent's car that he attempted to murder him and Criminal Case lodged against the driver of the car ended in acquittal. Tribunal considering the evidence of 1st respondent as P.W.1, F.I.R. and failure on the part of the appellant to disprove the evidence of 1st respondent, held that accident has occurred only due to rash and negligent driving by the driver of the car belonging to 2nd respondent by giving cogent and valid reason. There is no error in the said award of the Tribunal warranting interference by this Court.

15. As far as quantum of compensation is concerned, the 1st respondent alleged that he is an Auto Driver and was earning a sum of Rs.500/- per day. In the accident, he suffered grievous injuries and he lost his earning power. To prove the same, he examined himself as P.W.1 and Dr.M.Saravana Bavanantham as P.W.2. P.W.2/Doctor examined the 1st respondent and certified that 1st respondent suffered 50% disability. P.W.2/Doctor deposed with regard to nature of injuries and disability. The Tribunal considering the nature of injuries and evidence of P.W.2/Doctor and avocation of 1st respondent, applied multiplier method for awarding compensation for loss of earning power by giving valid reason. The 1st respondent has taken treatment in the Hospital as inpatient for 78 days in three different spells and underwent surgeries. Considering the nature of injuries and period of treatment taken by the 1st respondent, the amounts awarded by the Tribunal towards attendant charges and loss of amenities are excessive and the same are reduced to Rs.30,000/- and Rs.40,000/- respectively. The Tribunal has awarded a sum of



Rs.1,00,000/- towards mental agony. The 1st respondent is not entitled to any amount towards mental agony. Thus, the compensation awarded by the Tribunal towards mental agony is liable to be set aside and it is hereby set aside. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	72,000/-	72,000/-	Confirmed
2.	Pain and sufferings	75,000/-	75,000/-	Confirmed
3.	Loss of earning capacity	4,86,000/-	4,86,000/-	Confirmed
4.	Medical expenses	5,100/-	5,100/-	Confirmed
5.	Attendant charges	1,00,000/-	30,000/-	Reduced
6.	Loss of amenities	1,00,000/-	40,000/-	Reduced
7.	Transportation	10,000/-	10,000/-	Confirmed
8.	Mental agony	1,00,000/-	-	Set aside
9	Extra nourishment	10,000/-	10,000/-	Confirmed
10	Damages to clothes	1,000/-	1,000/-	Confirmed
	Total	Rs.9,59,100/-	Rs.7,29,100/-	Reduced by Rs.2,30,000/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,59,100/- is hereby reduced to Rs.7,29,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court along 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, to the credit of M.C.O.P.No.4571 of 2010 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-



Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.4571 of 2010, if the entire award amount has been already deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

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Sd/-
Assistant Registrar(AD IV)

//True Copy//

Sub Assistant Registrar

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To

1. The II Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

+1CC to Mr.K.Varadha Kamaraj, Advocate, Sr.No.42350

+1CC to Mrs.Elveera Ravindran, Advocate, Sr.No.42385

C.M.A.No.2487 of 2014

CA (CO)
K.RK. (07.09.2021)