



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.09.2020

Pronounced on: 11.09.2020

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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.739 of 2014
C.M.A.No.874 of 2015
& M.P.No.1 of 2014

M/s.New India Assurance Co.Ltd.,
Third Party Cell,
No.45, Moore Street,
Chennai - 600 001.

... Appellant
in C.M.A.No.739 of 2014

G.Saravanan aged 26 years,
S/o.Ganasundaram,
No.28, Thalaisyari Street,
Nannilam Post & Taluk,
Thiruvarur District-610 105

... Appellant
in C.M.A.No.874 of 2015

/versus/

1. Thiru. G.Saravanan,
S/o.Ganasundaram,
No.28, Thalaisyari Street,
Nannilam Post and Taluk,
Tiruvarur District.

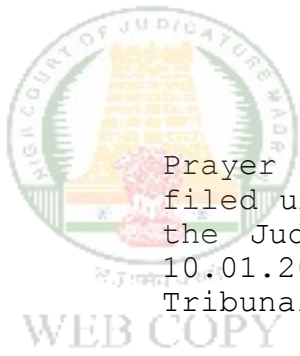
2. Thiru.K.Raja,
No.24, Sivagami Nagar,
Gowriwalkkam,
Chennai - 600 100.

... Respondents
in C.M.A.No.739 of 2014

1. Thiru.K.Raja,
No.24, Sivagami Nagar,
Gowriwalkkam,
Chennai - 600 100.

2. The New India Assurance Company Ltd.,
Party Cell, No. 45, Moore Street,
Chennai - 01.

... Respondents
in C.M.A.No.874 of 2015



Prayer in C.M.A.No.739 of 2014: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.4601 of 2010 on 10.01.2013 on the file of the Learned Motor Accident Claims Tribunal (Small Causes Court - II Judge) at Chennai.

Prayer in C.M.A.No.874 of 2015: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.01.2013 made in M.C.O.P.No.4601 of 2010 on the file of the Motor Accident Claims Tribunal (II Small Causes Court) at Chennai.

For Appellant : Mr.J.Chandran,
in C.M.A.No.739 of 2014

For R1 : Mr.K.Varadha Kamaraj,
in C.M.A.No.739 of 2014

For Appellant : Mr.K.Varadha Kamaraj,
in C.M.A.No.874 of 2015

For R2 : Mr.J.Chandran,
in C.M.A.No.874 of 2015

C O M M O N J U D G M E N T

(The case has been heard through video conference)

These two appeals arising from the award passed by the Motor Accident Claims Tribunal, Chennai in M.C.O.P.No.4601 of 2010. The claim petition is filed under Section 163 - A of Motor Vehicles Act by the claimant Mr.G.Saravanan was considered by the Tribunal and a sum of Rs.1,22,000/- with 7.5% interest from the date of numbering the petition till the date of deposit was ordered.

2. Having found that the driver of the offending vehicle had no license to drive, the Tribunal ordered the Insurance Company who is the 2nd respondent to pay and recover the same from the 1st respondent, who is the owner of the vehicle. The Insurance Company being aggrieved on the liability been wrongly fixed against them and the quantum arrived is disproportionately high, had preferred the C.M.A.No.739 of 2014. Whereas, not satisfied with the award amount, the claimant has preferred the C.M.A.No.874 of 2015 for enhancement.

3. As per the claim petition, on 20.08.2010, at about 13.30 hours, when the petitioner as pillion rider in the motorcycle bearing Registration No.TN-22-BX-8824 at Medavakkam Main Road, near Syndicate Bank ATM, Keezhkattalai, Chennai, an unknown Auto hit against the motorcycle. In the said accident,



the petitioner sustained grievous injury. The complaint in this case was lodged by the claimant. As per the complaint which is marked as Ex.P.1, the claimant was travelling on the pillion in the motorcycle bearing Registration No.TN-22-BX-8824, the vehicle was driven by his relative Thiru.Manikandan. At that time, on the opposite direction an auto came rash and negligently hit the motorcycle.

4. The case of the claimant is that though the negligence is attributable to the auto driver, the claim petition is filed under Section 163-A of the Motor Vehicle Act without refers to negligence. Being a third party, he is entitled for compensation as per the provisions under Section 163-A. Whereas, the Insurance Company has contested the claim petition on the ground that the 1st respondent motorcycle is no way connected with the alleged accident. Belated F.I.R being given by the claimant to get compensation. The inconsistency in the claimant's case renders the claim petition unsustainable.

5. Pointing that, in the claim petition, the rider of the motorcycle is mentioned as G.Angamuthu. Whereas, in the complaint given by the claimant it is stated that Thiru.Manikandan, as the rider of the motorcycle. The rider of the motorcycle had no driving licence hence the Insurance Company is not liable to indemnify the insurer.

6. The Tribunal, on considering the rival submissions has award a sum of Rs.1,22,000/- as per the following table:-

Loss of Income for 2 months	Rs.6,000/-
Transportation	Rs.2,000/-
Extra nourishment	Rs.2,000/-
Medical expenses	Rs.2,000/-
Pain and Suffering	Rs.10,000/-
Disability of 50% at the rate of Rs.2,000/- per disability	Rs.1,00,000/-
Total compensation is fixed at	Rs.1,22,000/-

7. The Learned Counsel for the insurer contended that the offending vehicle is an unknown auto. The rider of the motorcycle which is insured under the Appellant Company was in fact one Manikandan. Whereas, in the claim petition, it is mentioned as Mr.Angamuthu, who is actually the owner of the vehicle. The 1st respondent/Mr.Raja is not the real owner of the vehicle. Though the Tribunal has awarded the compensation to pay and recover, since the 1st respondent is not real owner and



proper party, the award is bad in law. Further, the quantum is also excessive since the doctor who has not treated the claimant has given exorbitant assessment of injury at 60% for fracture neck of femur right and fracture shaft of right femur.

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8. Per contra, the Learned Counsel for the claimant who is the appellant in C.M.A.No.874 of 2015 would submit that the claimant is third party travelling on the pillion. The claim is filed under no fault liability clause. Therefore, the Insurance Company, which has insured the vehicle is liable to pay compensation. The error in mentioning the owner of the vehicle cannot exonerate the insurance company from paying the compensation. The actual owner of the vehicle is Mr.G.Angamuthu, who is not a party before the proceedings. Nevertheless, the vehicle was driven by one Thiru.Manikandan, as per the F.I.R. Hence, the Tribunal has directed the Insurance Company to pay the compensation to the claimant and thereafter, recover it from the owner of the vehicle.

9. Heard the Learned Counsels for the appellant and the respondents. Records perused.

10. In this case, the real owner is not a party before this Court and claimant has wrongly mentioned the name Mr.Raja, as owner of the vehicle. While in fact Mr.Angamuthu is the real owner of the vehicle, thus, pay and recover order has become redundant. The Insurance Company cannot recover from the 1st respondent since he is not the real owner of the vehicle. The claimant has travelled as a pillion rider in the vehicle driven by one Mr.Manikandan who is the close relative of the claimant. To avoid filing his claim petition against his relative, he has chosen some other person who is no way related to the vehicle or the accident. Though this petition is filed under Section 163 - A, the claimant should have chosen the right person against whom he claims compensation.

11. Admittedly, it is a case of hit and run. An unknown auto which has hit motorcycle has fled away and therefore, the claimant has opted to file his claim petition under Section 163-A of Motor Vehicle Act.

Section 163-A of Motor Vehicle Act reads as below:

163A. Special provisions as to payment of compensation on structured formula basis.

—

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to



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pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

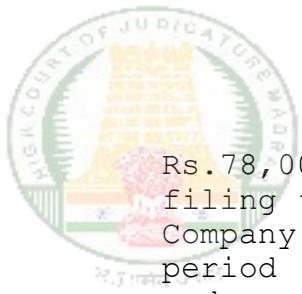
12. The claimant need not plead or prove negligence when the petition is filed under Section 163-A of the Motor Vehicle Act but the authorized insurer shall be liable to pay the claimant in case of death or permanent disability, due to the accident. As per the column mentioned in II - Schedule. For the purpose of meaning of Permanent Disability, the Motor Vehicle borrows the definition of Permanent Disability given in Workmen's Compensation Act.

13. In this case, as pointed by the Learned Counsel for the Insurance Company appellant in C.M.A.No.739 of 2014, the Tribunal has not followed the structured formula prescribed under the Schedule - II of the Motor Vehicles Act. The Tribunal having opined that the disability given by P.W.2 who is not the Doctor treated the injured and being on the higher side had not considered the probable disability caused to the claimant for the fracture neck of femur right and fracture shaft of right femur. While Doctor has assessed 60% disability, the Tribunal has fixed 50%. This assessment by all means excessive. In fact, for amputation of one leg below knee with stump the act has fixed only 50%. The injury sustained by the claimant is a fracture leading to shortening of right leg by 1 ½ inches.

14. The claimant had filed the case not against the real owner though the vehicle was insured under the 2nd respondent. Therefore, the 2nd respondent is deprived of its right to recover has permitted by the Tribunal. Even otherwise, the award of the Tribunal based on computation of disability is excessive and not in consonance with the Schedule-I of the Workmen's Compensation Act. Therefore, the award of the Tribunal is modified as below:-

Loss of Income for 2 months	Rs.6,000/-
Medical expenses	Rs.2,000/-
Pain and Suffering	Rs.10,000/-
Disability of 30% at the rate of Rs.2,000/- per disability	Rs.60,000/-
Total	Rs.78,000/-

15. Therefore, this Court holds that the claimant Mr.Saravanan, who is the appellant in C.M.A.No.874 of 2015 and 1st respondent in C.M.A.No.739 of 2014 is entitled for a sum of



Rs.78,000/- with 7.5% interest from the date (10.12.2010) of filing the petition till the date of realization. The Insurance Company shall deposit the award amount with interest within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same on filing proper application.

16. In the result, the Civil Miscellaneous Petitions Nos. 874 of 2015 is partly allowed and C.M.A.No.739 of 2014 dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Deputy Registrar(Lok Adalat)

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Sub Assistant Registrar

bsm

To

1.The Motor Accident Claims Tribunal
(Small Causes Court - II Judge), Chennai.

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.29776

C.M.A.No.739 of 2014
C.M.A.No.874 of 2015
& M.P.No.1 of 2014

BSM(CO)
CB(17/11/2021)