

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED 01.12.2020****CORAM****THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM****C.M.A(MD) No.1272 of 2007**

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The New India Assurance Company Limited,
Madurai,
Rep by its Branch Manager.

... Appellant/Second Respondent

vs.

1.G.Seenivasan

... 1st Respondent/Petitioner

2.Muthaiah

... 2nd Respondent/1st Respondent

(Set ex-parte before Tribunal &
not a necessary party)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the fair and decreetal order dated 20.09.2006 made in M.C.O.P.No.80 of 2004, on the file of the Motor Accident Claims Tribunal, (Sub Judge) Sivagangai.

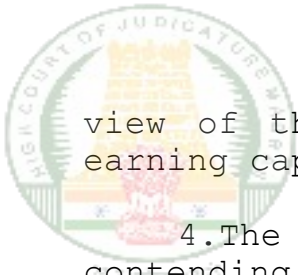
For Appellant	: Mr.K.Elangovan
For R-1	: No appearance
For R-2	: Ex-parte

J U D G M E N T

Aggrieved over the the award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.80 OF 2004, dated 20.09.2006, the appellant/Insurance Company has filed this appeal, wherein, against the claim of Rs.7,00,000/-, the first respondent was awarded Rs.1,13,606/- with interest at the rate of 7.5% p.a.

2.The first respondent/Petitioner herein filed a claim petition stating that on 09.09.2001, at about 14 hours, in Devakottai-Karakudi, Sekkalai Road, he was riding his motorcycle bearing Registration No.TN63 B 0298 from east to west in a slow and moderate speed, at that time, a car bearing Registration No.TN 59 P 5055, which came from the opposite direction in a rash and negligent manner with terrific speed, dashed against the motor cycle. According to the claimant, the driver of the car lost the control of the vehicle and came to the wrong side and caused the accident, in which, the first respondent sustained multiple grievous injuries.

3.He would further state that immediately after the accident, the first respondent was taken to the Government Hospital, Karaikudi and from where the first respondent was referred to Government Rajaji Hospital, Madurai, for better treatment. Then he took treatment in a private hospital at Madurai as in-patient on 09.09.2001 to 14.10.2001. During treatment, he underwent a surgery and thereby, he spent Rs.4,00,000/- towards medical expenses. In



view of the injury sustained in the accident, he lost his total earning capacity.

4.The claim was opposed by the appellant/insurance company contending that the claimant was under the influence of Alcohol and he invited the accident. Hence, the insurance company cannot be made liable to pay the compensation to the claimant. It is also stated that the claim is excessive and prayed for dismissal of the claim petition.

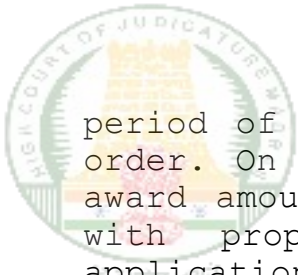
5.Before the Tribunal, to substantiate the case, on the side of the claimant P.W.1 to P.W.4 were examined and Ex.P1 to Ex.P15 were marked. on the said of the appellant/Insurance Company, no witness was examined and Ex.R1 was marked

6.Before the Tribunal, the claimant to prove the negligence, he examined P.W.2 the driver of the car and marked Ex.P.1-FIR and Ex.P.3-judgment of the criminal Court, which show that the Criminal case was registered against the driver of the car and he pleaded guilty and paid the fine amount. Though the insurance company produced Ex.R.1-wound certificate to show that the claimant was in an inebriated mood at the time of accident, accepting the evidence of P.W.2 and on the basis of Ex.P1 and Ex.P3 the Tribunal has held that the driver of the car caused accident and awarded compensation of Rs.1,13,606/- along with interest at the rate of 7.5% p.a. Challenging the award, the appellant has filed the present appeal.

7.Mr.K.Elangovan, learned counsel appearing for the appellant would argue that the claimant has not come to the Court with clean hands and the evidence adduced on behalf of the insurance company would show that the claimant took treatment in a Government Rajaji Hospital, Madurai, where, it has been clearly recorded that he was under the influence of alcohol. So the Tribunal ought to have fixed contributory negligence in this case. I am unable to agree with the submissions of the learned counsel for the appellant for the reason that except Ex.R1, wound certificate, no other material was produced to show that the claimant was also responsible for the accident. Hence, his contention is rejected.

8.With regard to the quantum, though it is claimed that the claimant has spent Rs.4,00,000/- towards medical expenses, the Tribunal rejected Ex.P.7 and Ex.P.12-medical bills, since there is a corroboration in the document and awarded a sum of Rs.1,13,606/- towards loss of income, medical expenses, pain and sufferings, transport expenses and loss of articles and extra nourishment. Therefore, this Court is of the opinion that the award of the Tribunal is fair and reasonable.

9.In that view, the Civil Miscellaneous Appeal is dismissed, as devoid of merits. Since the appeal is dismissed, the appellant is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a



period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs by filing necessary application before the Tribunal. No costs.

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Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp
To

- 1.The Sub Judge,
The Motor Accident Claims Tribunal,
Sivagangai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2c)

+1 cc to Mr.K.ELANGO VAN, Advocate, SR No.23557

C.M.A(MD) No.1272 of 2007

01.12.2020

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