



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 11.12.2020

CORAM:

THE HON'BLE MR. JUSTICE G.ILANGOVAN

C.M.A(MD) No.13 of 2010

and

MP(MD)No.2 of 2010

United India Insurance Company Limited,
Branch Office,
74-A, Salai Road,
Trichy-18.

.. Appellant/2nd Respondent

vs.

1.Khader Mohideen

... 1st Respondent / Petitioner

2.Arunachalam

... 2nd Respondent / 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree in M.C.O.P.No.2597 dated 07.02.2007 on the file of the Motor Accident Claims Tribunal, Third Additional Subordinate Court, Thiruchirappali.

For Appellant	: Mr.J.S.Murali
For R1	: No Appearance
For R2	: Exparte before the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the second respondent / Insurance Company against the order/award passed by the Motor Accident Claims Tribunal, Third Additional Subordinate Court, Thiruchirappali in M.C.O.P.No.2597 dated 07.02.2007.

2. The 1st respondent herein has filed a claim petition in M.C.O.P.No.2597 on the file of the Motor Accident Claims Tribunal, Third Additional Subordinate Court, Thiruchirappali, under Sections 140 and 166 of the Motor Vehicles Act, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in a traffic road accident. The learned Tribunal by the order/award dated 07.02.2007, has partly allowed the said claim petition and directed the 2nd respondent/ appellant and 1st respondent / to pay a sum of Rs.71,900/- with interest at the rate of 7.5% from the date



of filing of petition. Feeling aggrieved, the 2nd respondent / Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The case of the claimant before the Tribunal:-

On 22.04.2003, the petitioner was riding a two wheeler bearing Registration No.TN-45-H-8211 in Trichy - Thanjavur main road from East to West direction on the extreme left side of the said road by following the traffic rules. At that time, the first respondent was riding his two wheeler bearing Registration TN-07-F-5196 in the opposite direction and hit against the petitioner. As a result, the petitioner sustained grievous injuries on the right hand, left hand, head and fracture on the right knee. Immediately, the petitioner was taken to the Government Hospital, Trichy and the petitioner took treatment from 22.04.2003 to 06.05.2003 as inpatient. After taking treatment as inpatient, he was shifted to private hospital.

(ii) With regard to the aforesaid accident, a complaint was lodged before the respondent police and a case has been under Section 304 (A) IPC against the 1st Respondent.

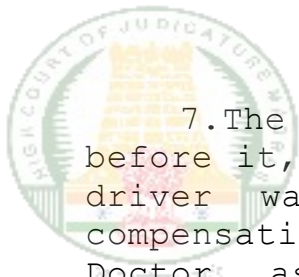
(iii) At the time of accident, the petitioner was hale and healthy and he was aged about 45 years and he was earning a sum of Rs.3,000/- per month and he spent the entire income to his family and hence, they claimed Rs.2,00,000/- as compensation.

(iv) At the time of accident, the first respondent's vehicle was duly insured with the 2nd respondent and hence, the respondents 1 and 2 are jointly and severally liable to pay compensation.

4. The 1st respondent remained ex-parte before the Tribunal. The 2nd respondent/Insurance Company alone contested the said claim petition by filing counter statement.

5. The case of the second respondent before the Tribunal is that the petitioner did not sustained any grievous injury and only because of the negligence of the petitioner, the accident took place and the first respondent was not having valid driving license. Therefore, the second respondent is not liable to pay compensation to the petitioner. The other details with regard to age and income were denied. Further, the compensation claimed by the claimant is very excessive and hence, he prayed for dismissal of the petition.

6.During enquiry before the Tribunal, on the side of the petitioner / claimant, two witnesses were examined and nine documents marked. On the side of the respondents no witnesses were examined and no documents marked.



7.The learned Tribunal, after considering the materials placed before it, came to the conclusion that only the first respondent's driver was responsible for the accident and regarding the compensation based upon the disability certificate issued by the Doctor, assessed the total compensation as Rs.71,900/- (Rupees Seventy One Thousand and Nine Hundred only). The learned Tribunal has also directed the respondent to pay interest for the aforesaid amount at the rate of 7.5% per annum from the date of filing of petition till the date of deposit and also directed them to pay the costs to the petitioner.

8.Feeing aggrieved, the 2nd respondent/Insurance Company has filed the present Civil Miscellaneous Appeal.

9.Points for consideration:-

1) *Whether the accident took place only due to the rash and negligence driving on the part of the appellant driver?*

2) *Whether the compensation awarded by the Tribunal is just and fair?*

10.Points No.1 & 2:-

(i) Regarding the accident, the Tribunal has taken into account the evidence of the petitioner as well as the First Information Report / Ex.P.1. It shows that he was hit by the first respondent's vehicle driver, who was coming in the opposite direction. It was suggested to him that he did not keep his extreme left side of the road and without giving way to the vehicle, which was coming in the opposite direction, he invited the accident. But, there was no contra evidence on the side of the respondent to show that only the petitioner was negligent. So, the manner of the accident, clearly shows that only the first respondent's vehicle driver was negligent while driving the vehicle. So, the findings of the Tribunal, on these aspects requires no interference and the contributory negligence made by the appellant is not established. So, the first point is concerned, that the findings of the Tribunal requires to be confirmed.

(ii) In respect of compensation, the Tribunal has taken into account the injuries sustained by the petitioner. Ex.P.2 is the wound certificate. He was taking treatment as inpatient from 22.04.2003 to 06.05.2003. P.W.2 examined him to assess the disability. As per his disability certificate, 25% is assessed. There was a fracture on the first metatarsal right foot bone. The Doctor / P.W.2 would see that the movement on the right leg is restricted because of the fracture and right leg thumb is also twisted and because of this movement restrictions, he assessed the



partial permanent disability as 25%. Since there is restriction in the movement of the leg, the assessment made by the Doctor can be taken as correct. So, the Tribunal awarded a sum of Rs.37,500/- towards his partial permanent disability. After adding conventional amount, the total compensation was fixed as Rs.71,900/-.

11. So, from the nature of injury and the treatment taken by the petitioner, this Court find that the compensation amount fixed by the Tribunal is fair and proper and it requires no interference.

12. In view of the same, the award passed by the Motor Accident Claims Tribunal, Third Additional Subordinate Court, Thiruchirappali in M.C.O.P.No.2597, dated 07.02.2007, is confirmed.

13. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14. The appellant / Insurance Company Ltd., is directed to deposit the award amount along with interest at the rate of 7.5% p. a from the date of petition till the date of deposit and cost within a period of two months from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the first respondent / claimant is permitted to withdraw the amount after deducting amount, if any, already received by him. The claimant is not entitled for interest for the default period, if there is any default.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

dss

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Third Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Thiruchirappali .

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.J.S.Murali , Advocate SR.No.25373

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