



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2020

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THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.A(MD) No.1459 of 2010

and

M.P. (MD) No.1 of 2010

The Oriental Insurance Company Limited
Represented through its
Branch Manager, Theni.

.. Appellant/4th Respondent
in M.C.O.P

vs.

1.Vasimalai

..1st Respondent/Petitioner
in M.C.O.P

2.P.Sundaram

3.The United India Insurance Company Limited,
Represented through its
BranchManager,
Thiruchenkodu.

4.S.S.Muthukrishnan

.. Respondents 2,3 & 4/Respondents 1, 2 & 3
in M.C.O.P

[Against R2 and R4, petition dismissed vide order dated 10.04.2019]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award and decree passed in M.C.O.P.No.93 of 2000, dated 07.06.2004 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge cum Fast Track Court, No.IV, Periakulam.

For Appellant	: Mr.C.Jawahar Ravindran
For Respondents	: No Appearance (for R1) Mr.J.S.Murali (for R3)



J U D G M E N T

The appellant/4th respondent has filed this Civil Miscellaneous Appeal against the award and ex-order, dated 07.06.2004, made in M.C.O.P.No.93 of 2000, by the Motor Accident Claims Tribunal, Additional District and Sessions cum Fast Track Court, No.IV, Periakulam.

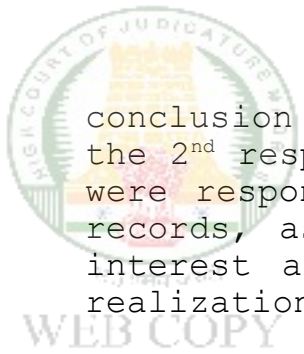
2.The first respondent/claimant filed a claim petition, claiming an amount of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand Only) towards compensation for the injuries sustained by him in a road accident.

3.The case of the claimant before the Tribunal is that the first respondent/petitioner was doing Banana wholesale business and on 10.05.1999 at about 05.30 a.m., the first respondent/petitioner was travelling along with his Banana in the lorry bearing Registration No.TN-60-1605 which belongs to the third respondent/4th respondent and when the Lorry was nearing Palacode, the first respondent/2nd respondent's vehicle bearing Registration.No.TN-27-V-0769 was driven by its driver in a rash and negligent manner and dashed against the lorry, in which, the first respondent/petitioner was travelling. In the accident, the petitioner, both drivers of the vehicle and Cleaner sustained injuries. One person also died. The first respondent/petitioner suffered a fracture on the right leg and simple injuries on the body. So, he claimed compensation amount of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand Only).

4.In the counter of the third respondent/second respondent has denied that the lorry belonging to the second respondent/1st respondent was insured with the 3rd respondent/2nd respondent at the time of the accident. The first respondent/petitioner did not suffer any disability. It is also denied that the accident took place only due to the 2nd respondent/1st respondent's vehicle driver, whereas only the 4th respondent/3rd respondent's vehicle driver was negligent. So, the case of the appellant/Insurance Company is to be proved only by the first respondent/petitioner that the lorry belonging to the fourth respondent/3rd respondent was insured with the appellant/Insurance Company on the date of the accident. It is also the duty of the 1st respondent/petitioner to prove that the driver of the fourth respondent/3rd respondent is having a valid driving licence. Other respondents remained ex-parte.

5.On the side of the 1st respondent/petitioner, two witnesses were examined and nine documents marked. On the side of the respondents, no witnesses was examined and no documents marked.

6.At the conclusion of the enquiry, the Tribunal came to the



conclusion that both the vehicle drivers, namely, the drivers of the 2nd respondent/1st respondent and the 4th respondent/3rd respondent were responsible for the accident and on the basis of the medical records, assessed the compensation amount at Rs.1,16,453.70/- with interest at 9% p.a., from the date of petition till the date of realization and costs of the petition.

7.As against the said award, the appellant/4th respondent before the Tribunal, preferred this appeal.

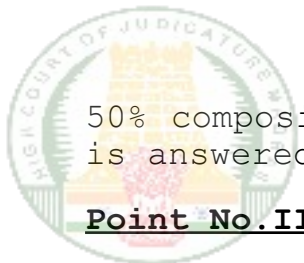
8.The point for consideration is as to (i) whether the accident took place due to the rash and negligent driving on the part of both the vehicle drivers, namely, the drivers of the 2nd respondent/1st respondent and the 4th respondent/3rd respondent vehicles? and (ii) whether the compensation fixed by the Tribunal is just and reasonable?

Point No. (i)

Unfortunately, the Tribunal though has held that both the drivers of the vehicles were responsible for the accident, has not fixed the percentage of composite negligence. So, it is the duty of this Court to assess the percentage of composite negligence. The lorry, in which the first respondent/petitioner was travelling, was proceeding from South to North direction and the 2nd respondent/1st respondent vehicle was in the opposite direction. After the accident, the 4th respondent/3rd respondent's lorry capsized on the eastern side. But as per Ex.P.1, the lorry capsized only on western side. After the investigation, the police filed a final report against the 1st respondent/2nd respondent vehicle driver.

From the evidence, it is seen that after the occurrence, the 1st respondent/2nd respondent vehicle was stopped in the place itself, but whereas the 4th respondent/3rd respondent's vehicle capsized on the western side. Simply because, the lorry, in which, the first respondent/petitioner was travelling, got capsized on the west, no inference can be drawn that only the 4th respondent/3rd respondent's vehicle driver was wholly responsible for the accident. Since both the vehicles were proceeding in the opposite directions and the accident took place in early hours, it can be inferred that both the vehicle drivers were not keeping their vigil properly.

A perusal of Ex.P.3 and Ex.P.4, the Motor Vehicle Inspectors' reports, shows that both the vehicles suffered damage in the front portion. From the damage suffered by the vehicles, it can be easily inferred that both the lorry drivers were negligent at the time of the accident. So, from the nature of the accident, the composite negligent of 50:50 can be fixed upon the drivers of the 2nd respondent/1st respondent and the 4th respondent/3rd respondent vehicles. Even though the Tribunal has not clearly stated that the percentage of composite negligence from the apportionment made regarding the compensation, we can infer that it fixed it as 50% and



50% composite negligence on both the lorry drivers. So, this point is answered accordingly.

Point No.II

Ex.P.2 is the Wound Certificate showing the nature of injuries suffered by the petitioner, wherein, we find that he has suffered six injuries and he was also referred to Ortho Doctor for further opinion. As per the opinion given by the Doctor, it is seen that the injuries sustained by him are grievous in nature. P.W.2 Doctor assessed the disability of the petitioner and partial permanent disability is fixed at 60%. He would say that the petitioner was operated on the right leg for both bones and he had also undergone plastic surgery and he underwent treatment for 103 days. Again, he underwent treatment for removing the plates fixed. The total disability suffered by him due to the shortening of the right leg knee portion is assessed at 60%. The medical bills for the treatment given to him, are marked as Ex.P.6 and the prescription is marked as Ex.P.7.

9.From the evidence of the Doctor and the documents produced, the Tribunal has assessed the partial permanent disability at 60% and awarded Rs.50,000/- as compensation for the disability. This was added to the medical bills, pain and suffering, transport expenses and loss of income were arrived at Rs.1,16,453/- (Rupees One Lakh Sixteen Thousand and Four Hundred and Fifty Three only) and in that amount, the 3rd respondent/2nd respondent and the appellant/4th respondent before the Tribunal were directed to pay a sum of Rs.58,226.85/- each and the total compensation was arrived at Rs.1,16,453/- (Rupees One Lakh Sixteen Thousand and Four Hundred and Fifty Three only) with interest at 9% per annum from the date of petition till the date of realization and costs of the petition.

10.From the documents produced and evidence, I am of the view that the assessment made by the Tribunal and the award of customary amounts, require no interference. But the Tribunal has awarded 9% p.a., from the date of petition. But as per the settled principles of law, 7.5 % p.a., interest is payable from the date of petition and the rest of the award amount awarded by the Tribunal, is confirmed.

11.In the result, this Civil Miscellaneous Appeal is dismissed in respect of the amount awarded by the Tribunal, which is confirmed and the rate of interest is modified from 9% p.a., to 7.5% p.a., made in M.C.O.P.No.93 of 2000 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions cum Fast Track Court No.IV, Periakulam. The appellant/Insurance Company 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 his share in the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs, as per the ratio of apportionment made by the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

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Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

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To

1.The Additional District and Sessions Judge,
(Fast Track Court No.IV),
(Motor Accident Claims Tribunal), Periakulam.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 c)

C.M.A (MD) No.1459 of 2010
11.12.2020

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