



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :17.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) No. 589 of 2012

and

M.P. (MD) No. 3 of 2012

The Oriental Insurance Co., Ltd.,
Represented by its, Branch Manager,
Chekkalai Road,
Karaikudi Nagar.

.. Appellant/Respondent No.3

Vs.

1.R.Palani Alagu

.. Respondent No.1 / Petitioner

2.G.Prabu

3.G.Balaji

.. 2 & 3 Respondents/Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award passed in M.C.O.P.No.1 of 2007 dated 19.10.2009 on the file of the Motor Accident Claims Tribunal, Devakottai.

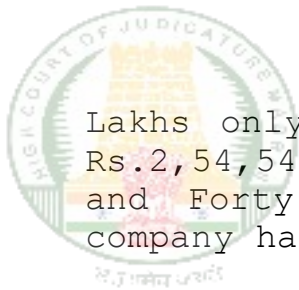
For Appellant	: Mr.C.Jawahar Ravindran
For 1 st Respondent	: Mr.R.Amarnath
Respondents 2 and 3	: Died
	(vide order dated 15.12.2019)

JUDGMENT

Heard learned counsels appearing on both side.

2.This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.1 of 2007 dated 19.10.2009 on the file of the Motor Accident Claims Tribunal, Devakottai.

3.The appellant herein is the third respondent, the first respondent herein is the petitioner/claimant and the second and third respondents herein are the respondents 1 and 2 in the claim petition. The first respondent herein has filed a petition in M.C.O.P.No.1 of 2007 claiming a sum of Rs.5,00,000/- (Rupees Five



Lakhs only) as compensation. The Tribunal has awarded a sum of Rs.2,54,547/- (Rupees Two Lakhs Fifty Four Thousand Five Hundred and Forty Seven only). Against which, the appellant/insurance company has filed the present appeal.

4.A brief substance of the claim petition in M.C.O.P.No.1 of 2007 is as follows:

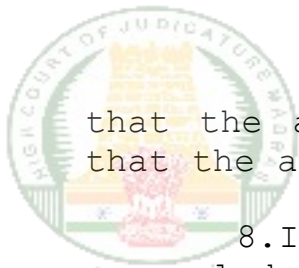
On 10.09.2006, at about 2.30 p.m., when the claimant was riding a Hero Honda vehicle with his sister-in-law, the driver of the vehicle TVS 50 bearing Registration No.TN-63-V-9376 drove the vehicle in a rash and negligent manner dashed against the claimant. Due to that accident, the claimant sustained injuries on the left cheek, left side forehead, left leg, etc and the pillion rider has also sustained injuries. The person who drove the TVS 50 vehicle, also sustained injuries. The claimant was admitted in Devakottai Sivakumar hospital and then he was shifted to Madurai Meenakshi Mission Hospital. The claimant was a diploma holder in electrical and he was working as an Electrician. He was earning Rs.5,000/- (Rupees Five Thousand only) per month. The claimant was 'in patient' from 10.09.2006 till 25.09.2006. The claimant claimed a sum of Rs.5,00,000/- as compensation.

5.The brief substance of the counter filed by the third respondent in the claim petition is as follows:

The age, profession and the income of the claimant are denied. The accident is only due to the rash and negligent driving of the claimant. There is no insurance policy for the Hero Honda vehicle. The claimant is not having any valid driving licence. The accident took place on 10.09.2006. FIR was lodged only on 14.09.2006. The claimant is not entitled for any compensation.

6.On the side of the claimant, two witnesses were examined as P.W.1 and P.W.2 and 15 documents were marked as Exs.P1 to P15. On the side of the respondents, four witnesses were examined as R.W.1 to R.W.4 and 9 documents were marked as Exs.R1 to R9. After considering both sides, the Tribunal has awarded a sum of Rs.2,54,547/- (Rupees Two Lakhs Fifty Four Thousand Five Hundred and Forty Seven only) as compensation. Against which, the appellant/insurance company has preferred this appeal.

7.On the side of the appellant, it is stated that the Tribunal has failed to consider the evidence of R.W.1 to R.W.3 and the documents, Exs.R1 to R9. R.W.1 has deposed that he has not verified the driving licence of the second respondent and that as per the investigation report, Ex.R8, the second respondent was studying 9th standard and was aged about 15 years and that Ex.P7 is the driving licence of the claimant and not that of the second respondent and that the Tribunal ought to have held that the second respondent was not having any valid driving licence and



that the appellant herein is not liable to pay compensation and that the award amount is excessive.

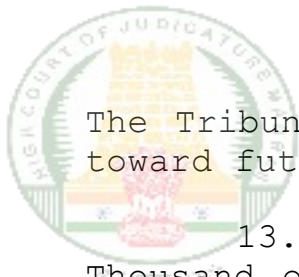
8. It is seen that the FIR, Ex.P1 and Ex.P4, chargesheet were lodged against the second respondent herein. P.W.1 has deposed that the accident occurred only due to the rash and negligent driving of the second respondent herein. R.W.3 has deposed that in the investigation done by the Insurance company, they came to know that the accident was only due to the rash and negligent driving of the claimant. R.W.3 filed the investigation report, Ex.R8.

9. R.W.1 was the owner of the vehicle, Ex.P3 and Ex.P5, motor vehicle accident reports reveals that the accident was not due to any mechanical defects in the vehicle. Ex.P7 reveals that the claimant was having a valid driving licence at the time of accident. On the basis of Exs.P3, P4 and P5 and on the basis of Ex.R8, it is decided that the accident was due to rash and negligent driving of the second respondent herein. Ex.R1 reveals that insurance policy was valid. The appellant has failed to prove that the first respondent herein was not having any valid driving licence. Hence, the Tribunal is correct in deciding that the appellant and the respondents 2 and 3 herein are liable to pay compensation.

10. On the side of the appellant, it is argued that the quantum awarded by the Tribunal is excessive. It is seen that the claimant had undergone a Diploma course in Electronics. Ex.P8 was the Diploma Certificate. The Tribunal has fixed the monthly income as Rs.2,500/- (Rupees Two Thousand and Five Hundred only). The evidence of P.W.1 and Ex.P8 proves the qualification of the claimant and the age of the claimant. Hence, the monthly salary fixed by the Tribunal is correct.

11. The disability certificate was marked as Ex.P11. P.W.2 has deposed about the disability of the claimant. The discharge summary was also marked as Ex.P9. The photos and negatives were marked as Ex.P10. The disability certificate was marked as Ex.P11. The hospital case sheet and X ray were also marked as Exs.P12 to P14. C.T. Scan report was also marked as Ex.P15. On the basis of the medical documents and on the basis of Ex.P11, the Tribunal has fixed the disability as 33 % and has awarded a sum of Rs.66,000/- (Rupees Sixty Six Thousand only) as compensation.

12. The Tribunal has awarded Rs.96,047/- (Rupees Ninety Six Thousand and Forty Seven only) towards medical expenses. The medical bills were marked as Ex.P6. It is seen that the claimant is having 33 % disability and steel plate and rods were fixed and he has to undergo another surgery to remove the same.



The Tribunal has awarded Rs.40,000/- (Rupees Forty Thousand only) toward future expenses.

13.The Tribunal has awarded Rs.4,000/- (Rupees Four Thousand only) towards attendants charges and Rs.20,000/- (Rupees Twenty Thousand only) towards pain and suffering. The Tribunal has awarded a sum of Rs.10,000/- (Rupees Ten Thousand only) towards temporary loss of income from 14.09.2006 till 14.12.2006. The Tribunal has awarded Rs.3,000/- (Rupees Three Thousand only) towards transportation and Rs.15,000/- (Rupees Fifteen Thousand only) towards extra nourishment. The Tribunal has awarded Rs.500/- (Rupees Five Hundred only) towards loss of articles. The amount awarded under various heads is reasonable.

14.In the above circumstances, the compensation awarded by the Tribunal is reasonable and there is nothing sufficient enough to interfere in the award passed by the Tribunal.

15.Hence, this Civil Miscellaneous Appeal is dismissed and the award passed in M.C.O.P.No.1 of 2007 dated 19.10.2009 on the file of the Motor Accident Claims Tribunal, Devakottai is confirmed. The appellant is directed to deposit the award amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and along with costs. The appellant is directed to deposit the above said amount if not deposited earlier, within a period of 8 weeks from the date of receipt of copy of this Judgment. On such deposit, the claimant is permitted to withdraw the same along with cost after deducting any amount already received by him earlier, without filing any formal petition before the Tribunal. Excess amount if any deposited shall be refunded to the appellant. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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/ /2020

Sub Assistant Registrar(CS)

MRN

To

1.The Motor Accident Claim Tribunal, Devakottai.



1. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.C.JAWAHAR RAVINDRAN, Advocate (SR-6956[F] dated
18/02/2020)

C.M.A. (MD) No. 589 of 2012
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