



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.1553 of 2015

and

MP No.1 of 2015

The Bajaj Alliance General Insurance Co. Ltd.,
GE Plaza,
Airport Road,
Yerwada
Pune - 411 066.

...Appellant/2nd Respondent

versus

1. Perumal

...1st Respondent/Petitioner

2. J.Rathnasekar

...2nd Respondent/1st Respondent

(set exparte before the Tribunal)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree in MCOP No.953 of 2007, dated 23.09.2010 on the file of the Motor Accidents Claims tribunal, Chief Magistrate Court, Krishnagiri.

For Appellant : Ms.P.Shobana
for Mrs.R.Sreevidhya

For Respondents : Mr.K.Prasanna
for M/s.Mukund R. Pandian for R1
R2 - Served - No appearance

JUDGMENT

(Heard Video Conference)

This appeal has been filed by the appellant / Insurance Company challenging the award dated 23.09.2010 passed by the Motor Accidents Claims Tribunal, Krishnagiri in MCOP No.953 of 2007.

2. The appellant / Insurance Company has challenged the impugned award on the following grounds :

a) the Tribunal ought not to have adopted the multiplier method for assessing the compensation and



b) the Tribunal has erroneously failed to grant pay and recovery rights to the appellant.

3. The Tribunal under the impugned award directed the appellant /Insurance Company to pay the first respondent / claimant a compensation of Rs.4,32,718/- as detailed hereunder :

Heads	Amount awarded by the Tribunal (Rs.)
Compensation for loss of income	3,46,032/-
Compensation for his pain and sufferings	15,000/-
Medical bills	66,686/-
Transport and extra nourishment	5,000/-
Total compensation	4,32,718/-

4. The first respondent / claimant sustained the following injuries on 22.02.2007 as a result of an accident caused by a vehicle insured with the appellant :

Type III B Open Winquist hansen Grade 4 communicated fracture distal 1/4th of left tibia and fibula,

2) Lacerated wound 6 x 3cm over medial aspect of lower 1/3rd of leg exposing bone spike of proximal fragment and minimally contaminated.

5. The Doctor, PW2, who examined the first respondent has also deposed before the Tribunal that due to the injuries sustained by the first respondent / claimant, he is unable to sit, run, stand, squat, to climb steps and to carry weight. The Doctor has assessed the disability at 40%. However, the Tribunal for the purpose of assessing the compensation towards loss of income by adopting the multiplier method has taken the disability of the first respondent /claimant to be at 25%. The first respondent / claimant was 57 years old at the time of the accident. After considering his age and after giving due consideration to the nature of injuries sustained by him, this Court is of the considered view that the assessment of the disability by the Tribunal at 25% is a correct assessment.

6. The Doctor, PW2 has admittedly examined the first respondent / claimant only in the year 2010 i.e. after 3 years from the date of the accident. As seen from the evidence



available on record, no iota of evidence has been let in by the appellant / Insurance Company before the Tribunal to prove that the disability sustained by the first respondent / claimant was not as a result of an accident caused by their insured vehicle. Therefore, this Court is of the considered view that the Tribunal has rightly adopted the multiplier method in view of the disablement of the first respondent / claimant, as stated supra as a result of an accident caused by the insured vehicle.

7. Therefore, the first contention of the appellant / Insurance Company is rejected by this Court.

8. With regard to the second contention viz., non grant of pay and recovery rights is concerned, there is merit in the contention of the appellant/Insurance Company for the following reason :

Admittedly, as seen from the evidence available on record, the rider of the insured vehicle was not possessing driving licence. A notice was also sent by the appellant / Insurance Company to the insured calling upon him to produce a copy of the Driving Licence of the rider of the motor cycle, which has been duly acknowledged by the owner (insured). The notice, dated 05.09.2021 as well as the acknowledgment card has been marked as Exs.R4 and R5 before the Tribunal.

9. The appellant / Insurance Company has also examined the RTO official as RW1. The RTO official (RW1) has also deposed before the Tribunal that the rider of the motor cycle (insured vehicle) was not possessing a valid driving licence at the time of the accident. However, the Tribunal despite the documentary evidence as well as the deposition of RW1 has erroneously not granted pay and recovery rights to the appellant. The second respondent is the owner of the vehicle (insured) has also remained ex-parte both before the Tribunal as well as before this Court. In view of the clinching evidence available on record to prove that the rider of the motor cycle (insured vehicle) does not possess the driving licence, at the time of the accident, this Court grants pay and recovery rights to the appellant.

10. For the foregoing reasons, the Civil Miscellaneous Appeal shall stand partly allowed by granting pay and recovery rights to the appellant / Insurance Company and permitting them to seek recovery of the compensation amount paid to the claimant from the owner of the insured vehicle. No costs. Consequently, connected miscellaneous petition is closed.

11. The appellant / Insurance Company is directed to deposit the entire award amount as awarded by the Tribunal



together with interest at 7.5% p.a. from the date of the claim petition till the date of realization and costs, less the amount, if any, already deposited to the credit of MCOP No.953 of 2007, on the file of the Motor Accidents Claims Tribunal, Chief Magistrate Court, Krishnagiri, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent / claimant through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Chief Magistrate,
Motor Accidents Claims Tribunal,
Krishnagiri
2. The Section Officer,
V.R. Section
High Court of Madras,
Chennai - 104.

+lcc to Mrs.R.Sreevidhya, Advocate, S.R.No.35260
+lcc to M/s.Mukund R. Pandian , Advocate, S.R.No.35080

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PP[co]
NSK 26/10/2021