



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 03.03.2021

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CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.3428 of 2013

Govindasamy

... Appellant/ Claimant

Vs.

1. V. Shanmugam

2. The National Insurance Co. Ltd.
rep by its Divisional Manager,
Divisional Officer-7, No.50,
Janpath,
New Delhi 100 001.

... Respondents/ Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 03.04.2012 passed in M.C.O.P.No.465 of 2007 by the Additional District Judge, Motor Accident Claims Tribunal, Dharmapuri.

For Appellant : Mr. M. Selvam

For respondents: Mr.D. Bhaskaran for R2
R1 - Refused-Not Ready Notice

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal and also against the liability fixed on the part of the owner of the vehicle, the claimant is before this court for enhancement and also to direct the insurance company to pay the compensation.

2. The claimant has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 05.07.2006.



3. The brief case of the claimant is as follows: On 05.07.2006 at 5.00 a.m., the claimant was riding his motorcycle bearing registration No.TN-29-E-3030 along Thippampatty-Karimangalam Main road and while nearing Mottupatty junction, a speedy motorcycle bearing registration No.TN-29-A-4041 coming from opposite side dashed against him, thereby he sustained fracture and also grievous injuries all over his body, According to the claimant, the rash and negligent riding of the rider of the motorcycle bearing registration No.TN-29-A-4041 was the cause of accident and since the first respondent/ owner of the vehicle insured his motorcycle with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the second respondent/ insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant and Dr.Ravisankar were examined as PW1 and PW2 and Ex.P1 to Ex.P5 were marked. On the side of the respondents, two witnesses were examined and Ex.R1 to Rx.R5 were marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.64,000/- as compensation to the claimant and also directed the owner of the vehicle to pay compensation and dismissed the claim petition as against the insurance company. The compensation awarded under various heads, which is extracted hereunder.

S1 No	Heads	Amount in Rs.
1	Disability (5 x 2000)	10,000
2	Pain and sufferings	25,000
3	Loss of consortium	20,000
4	Mental agony	5,000
5	Extra Nourishment and transportation charges	4,000
	Total	64,000

Aggrieved over the award passed by the Tribunal, the claimant has filed the present appeal.

7. Heard the learned counsel for the appellant and the counsel appearing for the insurance company and I have perused the materials on record.



8. The learned counsel appearing for the appellant submitted that the disability suffered by the claimant has assessed by the Doctor (PW2) as 10%, and he has given disability certificate Ex.P5, however, the Tribunal has fixed disability only at 5%, without any basis. Further he submitted that without considering the evidence on record and the nature of injuries sustained by the claimant, the Tribunal has awarded a very meagre amount, and hence he prayed for enhancement of compensation. According to the appellant, the insurance company is liable to pay compensation under whom, the offending vehicle was insured, but, the Tribunal has erred in directing the owner of the vehicle to pay compensation to the claimant.

9. The learned counsel appearing for the second respondent/ insurance company submitted that after analysing the evidence and the documents on record, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

10. Now the point for consideration is

(i) Whether the compensation awarded by the Tribunal has to be enhanced.

(ii) Whether the insurance company is liable to pay compensation?

11. Point No.1 and 2

The contention of the learned counsel appearing for the appellant is that the insurance company has to indemnify the compensation amount, but the Tribunal has absolved the insurance company from paying the compensation amount on the ground that the driver of the vehicles did not possess valid driving license to drive the motorcycle.

12. At this juncture, it is relevant to rely upon a decision rendered by the Honourable Supreme Court in Kempaiah and others Vs. S.S.Murthy and another reported in 2017(1) TNMAC 737 (SC), wherein, it is held thus:

11. In National Insurance Co. Ltd. Vs. Swaran Singh and others, 2004 (1) TN MAC 104(SC): 2004(3) SCC 297, this court has inter alia, observed as follows:

" The breach of policy condition e.g. disqualification of the Driver or invalid driving licence of the driver, as contained in sub-Section (2) (a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere



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absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time"

In the light of the above decision, the insurance company cannot escape from its liability to pay valid compensation to the claimant, merely because the driver did not possess valid licence. Therefore, the insurance company is liable to pay compensation at the first instance to the claimant and then recover the same from the owner of the vehicle.

13. As far as the quantum of compensation is concerned, both the counsels advanced their respective arguments on merits. The learned counsel appearing for the appellant fairly admitted that this is a case of injury, however, the Tribunal has wrongly awarded a sum of Rs.20,000/- towards " Loss of consortium". Further, he submitted that no amount was awarded towards "loss of amenities" and " Attender's charges" and hence the compensation awarded by the Tribunal may be enhanced.

14. Considering the above said submission and also taking into account the evidence of the Doctor PW2 and the disability certificate Ex.P5, the disability suffered by the claimant is fixed at 10% and accordingly, a sum of Rs.20,000/- (10 x 2000) is awarded towards "Disability". Further, a sum of Rs.3,000 is awarded towards " Loss of amenities" and a sum of Rs.10,000/- is awarded towards " Attender's charges". Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Disability	10,000	20,000
2	Pain and sufferings	25,000	25,000
3	Loss of consortium	20000	-
4	Mental agony	5,000	5,000
5	Extra Nourishment and Transportation charges	4,000	4,000
6	Loss of amenities	-	3,000



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Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
7	Attender's charges	-	10,000
	Total	64,000	67,000

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

15. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.64,000/- to Rs.67,000/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the revised compensation of Rs.67,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order and they are at liberty to recover the same from the owner of the vehicle.

(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

mst

To

1. The Additional District Judge,
Motor Accident Claims Tribunal, Dharmapuri.

2. The Section Officer,
V.R. Section,
Madras High Court, Chennai-104.

+1cc to Mr.D.Bhaskaran, Advocate Sr.13104

CMA. No.3428 of 2013

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