



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.843 & 844 of 2021
and
C.M.P.Nos.4865 & 4871 of 2021

United India Insurance Company Limited,
1st Floor, No.136, South Street,
Thirukoilur Taluk,
Villupuram District - 605 757.

..Appellant/2nd Respondent
(in both C.M.As)

Vs.

1.Munirathinam @ Muniappan

.. 1st Respondent/Claimant
(in C.M.A.No.843 of 2021)

1.Babu

.. 1st Respondent/Claimant
(in C.M.A.No.844 of 2021)

2.E.Kannan

..2nd Respondent/1st Respondent
(in both C.M.As)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common Judgment and Decree dated 07.08.2020 made in M.C.O.P.Nos.31 & 32 of 2017 respectively on the file of the Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri.

For Appellant : Mr.D.Bhaskaran
(in both the appeals)

C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.These Civil Miscellaneous Appeals are filed by the Insurance Company to set aside the common award dated 07.08.2020 made in M.C.O.P.Nos.31 & 32 of 2017 respectively on the file of the Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri.

3.Both the Civil Miscellaneous Appeals are arising out of the same accident and common award and hence, they are disposed of by this common judgment.



4.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.Nos.31 & 32 of 2017 respectively on the file of the Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri. The 1st respondent in both the appeals filed the claim petitions in M.C.O.P.Nos.31 & 32 of 2017, claiming a sum of Rs.5,00,000/- & Rs.10,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 24.10.2016.

5.According to 1st respondent in both the appeals, on 24.10.2016 at about 04.45 P.M., while the 1st respondent in C.M.A.No.844 of 2021 was riding the TVS Apache motorcycle bearing Registration No.TN 29 BY 3349 along with the 1st respondent in C.M.A.No.843 of 2021 as pillion rider on the left side of the Royakottai - Palacode road, near Kandagabail pirivu road, the driver of the Bolero Maxi Truck bearing Registration No.TN 54 X 0388 owned by 2nd respondent, who was driving the Truck from the opposite direction, drove the same in a rash and negligent manner and while overtaking a TVS Champ motorcycle bearing Registration No.TN 29 C 5547, lost his control over the Truck and dashed against the motorcycle driven by the 1st respondent in C.M.A.No.844 of 2021 and caused the accident. In the accident, the motorcycle driven by the 1st respondent in C.M.A.No.844 of 2021 was thrown on the TVS Champ and the 1st respondent in both the appeals sustained multiple grievous injuries all over their body. Immediately after the accident, the 1st respondent in both the appeals were taken to Rajeswari Manoharan Multi Speciality Hospital, Dharmapuri and underwent surgeries. Therefore, the 1st respondent in both the appeals filed the above said claim petitions claiming a sum of Rs.5,00,000/- and Rs.10,00,000/- respectively as compensation for the injuries sustained by them against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the truck respectively.

6.The 2nd respondent-owner of the truck remained exparte before the Tribunal.

7.The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent in both the appeals. The appellant-Insurance Company denied the manner of accident as alleged by the 1st respondent in both the appeals. According to appellant, the 1st respondent in C.M.A.No.844 of 2021 drove the TVS Apache motorcycle in a rash and negligent manner and dashed against the Truck owned by 2nd respondent and invited the accident and there is no negligence on the part of the driver of the Truck owned by 2nd respondent. Hence, the appellant is not liable to pay any compensation to the 1st respondent in both the appeals. The Truck owned by 2nd respondent was insured with the appellant vide Policy



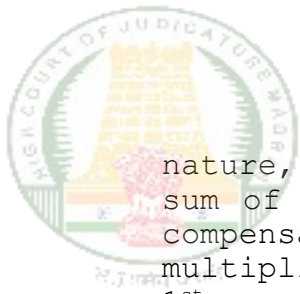
No.2806823116P104625406 for the period from 08.07.2016 to 07.07.2017 and the driver of the Truck was possessing valid driving license upto 05.03.2032 along with badge. The appellant denied the age, avocation, income, nature of injuries, disability, period of treatment taken and the medical expenses incurred by 1st respondent in both the appeals. In any event, the quantum of compensation claimed by 1st respondent in both the appeals are highly excessive and prayed for dismissal of both the claim petitions.

8.Before the Tribunal, the 1st respondent in both the appeals examined themselves as P.W.1 & P.W.2 and 9 documents were marked as Exs.P1 to P9. The appellant-Insurance Company examined one Loganathan, Junior Assistant from RTO, Palacode as R.W.1 and marked two documents as Exs.R1 & R2. Exs.C1 to C3 were marked as Court Exhibits.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the truck owned by 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.6,14,576/- and Rs.10,07,997/- respectively as compensation to 1st respondent in both the appeals at the first instance and recover the same from the 2nd respondent-owner of the truck.

10.Challenging the said common award dated 07.08.2020 made in M.C.O.P.Nos.31 & 32 of 2017, the appellant-Insurance Company have come out with the present appeals.

11.The learned counsel appearing for the appellant-Insurance Company contended that three vehicles were involved in the accident. The 1st respondent in both the appeals failed to implead the driver, owner and insurer of the other vehicles. The 1st respondent in C.M.A.No.844 of 2021 admitted that he is not possessing driving license. The 1st respondent in both the appeals failed to exercise a reasonable care and failed to avoid the accident and the 1st respondent in C.M.A.No.844 of 2021 is also equally responsible for the accident. In the connected claim, only 25% negligence and liability is fixed on the rider of the Truck bearing Registration No.TN 54 X 0388 owned by 2nd respondent. The 1st respondent in C.M.A.No.844 of 2021 equally contributed negligence to the accident and the Tribunal ought to have apportioned the liability equally. The 1st respondent in both the appeals failed to produce any medical records to show that after initial course of treatment, they have taken any subsequent or continuous treatment. The Tribunal failed to note that the disability assessed by the Medical Board is only physical disability. The Tribunal having held that the disability assessed by the Medical Board is partial permanent in



nature, erroneously equated the same with earning capacity. The sum of Rs.3,91,680/- & Rs.6,12,000/- awarded by the Tribunal as compensation towards loss of earning capacity by adopting multiplier method by taking the percentage of disability of the 1st respondent in C.M.A.No.843 of 2021 at 32% and the percentage of disability of the 1st respondent in C.M.A.No.844 of 2021 at 50% is unsustainable. The Tribunal should not mechanically apply the multiplier method for awarding compensation. In the absence of any evidence to show that 1st respondent in both the appeals suffered loss of earning capacity or their earning capacity is reduced, the multiplier method adopted by the Tribunal for awarding compensation towards loss of earning capacity is not correct. The percentage of disability assessed for a particular part of the body or limb cannot be said to be the disability for whole body. The amounts awarded by the Tribunal towards loss of earning capacity, extra nourishment, medical expenses, pain and sufferings, loss of income are highly excessive and prayed for setting aside the award passed by the Tribunal.

12.Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials on record.

13.It is the case of the 1st respondent in both the appeals that while they were traveling in the TVS Apache motorcycle, the 2nd respondent-driver cum owner of the Truck, drove the same in a rash and negligent manner and while overtaking a TVS Champ motorcycle bearing Registration No.TN 29 C 5547, lost his control and dashed against the said TVS Apache motorcycle in which the 1st respondent in both the appeals were traveling and caused the accident. In the accident, 1st respondent in both the appeals sustained grievous injuries and claimed compensation for the injuries sustained by them. To substantiate their case, the 1st respondent in both the appeals examined themselves as P.W.1 & P.W.2 and marked F.I.R. as Ex.P1, which was registered against the driver of the Truck owned by 2nd respondent. On the other hand, it is the case of the appellant that the 1st respondent in C.M.A.No.844 of 2021, who was riding the TVS Apache motorcycle alone dashed on the Truck and caused the accident and the accident has not occurred due to the negligence on the part of the 2nd respondent. The appellant denied the fact that 1st respondent in C.M.A.No.844 of 2021 possessed driving license. The appellant has not examined any eyewitness, especially the driver of the Truck to prove that accident has occurred only due to negligence on the part of the 1st respondent in C.M.A.No.844 of 2021. The appellant has examined one Loganathan, Junior Assistant from RTO, Palacode and contended that the 1st respondent in C.M.A.No.844 of 2021 did not possess Fitness Certificate on the date of accident and the same was renewed subsequent to the date of accident. The Tribunal considering the evidence of P.W.1, P.W.2, contents of Ex.P1/F.I.R. and failure



on the part of the appellant to disprove the evidence of P.W.1 & P.W.2, accepted the evidence of P.W.1 & P.W.2 and held that accident has occurred only due to rash and negligent driving by the driver of the Truck owned by 2nd respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.The appellant has not proved by acceptable evidence that the 1st respondent in C.M.A.No.844 of 2021 was not possessing driving license at the time of accident. Except oral evidence, the appellant has not taken any steps to prove the said contention that the 1st respondent in C.M.A.No.844 of 2021 was not possessing driving license at the time of accident. In view of the same, the said contention is not acceptable. Further, the 2nd respondent proved that he was possessing valid driving license on the date of accident by producing Ex.P4/copy of driving license. The Tribunal considering the evidence of R.W.1 that application for renewal of fitness was filed on 03.05.2017 and fitness was granted till 02.05.2018. In view of the same, there was no fitness certificate for the Truck owned by 2nd respondent on the date of accident. The Tribunal considering the same, ordered pay and recovery and there is no error in the said finding of the Tribunal.

15.As far as quantum of compensation is concerned, the 1st respondent in C.M.A.No.843 of 2021 sustained closed fracture both bone left leg middle 3rd leg, lacerated injury over occipital region, lacerated injury over left hip and multiple injuries all over the body and a surgery was done with closed tibia interlocking nailing. The 1st respondent in C.M.A.No.844 of 2021 sustained compound Grade III B fracture both bone left leg middle 3rd segmental fracture, pubic diastasis, fracture lateral humeral condyle left side, monteggia fracture dislocation left side (type 1), compound fracture PPX of 3rd, 4th and 5th finger left hand and multiple grievous injuries all over the body and underwent surgery with wound debridement and external fixator application for left leg, closed reduction and pelvic binder application, ORIF with multiple cannulated cancellous screw fixation for lateral humeral condyle fracture left side, ORIF with plate osteosyntheis for monteggia fracture PPX of 3rd, 4th and 5th finger left hand. The 1st respondent in both the appeals were referred to Medical Board, Dharmapuri. The Medical Board, Dharmapuri examined the 1st respondent in C.M.A.Nos.843 & 844 of 2021 and certified that they suffered 32% & 50% disability and issued Exs.C1 & C2/disability certificates respectively to that effect. In Ex.C1, it was mentioned that the 1st respondent in C.M.A.No.843 of 2021 was having pain and swelling left knee, diffuse tenderness, bone thickenking, ROM left knee painful and restricted and he could not do his activities as before. In Ex.C2, it was mentioned that 1st respondent in C.M.A.No.844 of



2021 suffers pain, stiffness and swelling left elbow and movements restricted, pain, swelling and deformity in left leg, muscle warts, difficulty in walking, standing, sitting with crossed legs and in fractured areas and he could not do his activities as before. The 1st respondent in C.M.A.No.843 of 2021 claimed that he was a Building Mason aged 27 years and also doing Agriculture and was earning a sum of Rs.20,000/- per month and the 1st respondent in C.M.A.No.844 of 2021 claimed that he was a Building Mason aged 29 years and also doing Agriculture and was earning a sum of Rs.20,000/- per month. The Tribunal considering the nature of injuries, disability certificate issued by the Medical Board, recorded that 1st respondent in both the appeals cannot do their work as before, adopted multiplier method and awarded compensation for loss of earning capacity and the same is proper. From Exs.P2 & P9/discharge summaries, it is seen that 1st respondent in both the appeals have taken treatment as inpatient for 7 days. The Tribunal considering the nature of injuries, disability, period of treatment taken, age and avocation of 1st respondent in both the appeals, awarded compensation under different heads, which are not excessive warranting interference by this Court.

16.In the result, both the Civil Miscellaneous Appeals are dismissed and the compensation awarded by the Tribunal at Rs.6,14,576/- & Rs.10,07,997/- respectively to the 1st respondent in C.M.A.Nos.843 & 844 of 2021 together with interest and costs is hereby confirmed. The appellant-Insurance Company is directed to deposit the respective award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.Nos.31 & 32 of 2017 respectively on the file of the Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri, at the first instance and recover the same from the 2nd respondent. On such deposit, the 1st respondent in both the appeals are permitted to withdraw their respective award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. Consequently the connected Miscellaneous Petitions are closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Special Subordinate Judge,
Special Subordinate Court
Motor Accidents Claims Tribunal,
Dharmapuri.

2. The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.Nos.843 & 844 of 2021

RSV(CO)
SP(10/11/2021)