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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1988 of 2020 and 223 of 2021
and C.M.P.No.1490 of 2021

C.M.A.No.1988 of 2020
Jayakumar

.. Appellant /Petitioner

Vs.

1.Suresh

2.The Reliance General Insurance Co.Ltd.
Branch office:Sri lakshmi complex
1st floor, Bharathi street
Omalar main road, Swarnapuri
Salem.

.. Respondents/Respondents

C.M.A.No.223 of 2021

The Branch Manager
The Reliance General Insurance Co.Ltd.
Sri lakshmi complex
1st floor, Bharathi street
Omalar main road, Swarnapuri
Salem.

.. Appellant/2nd Respondent

Vs.

1.Jayakumar

...1st Respondent/Petitioner

2.Suresh

..2nd Respondents/1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.10.2019 made in M.C.O.P.No.104 of 2016 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Tiruchengode.

In C.M.A.No.1988 of 2020

For Appellant : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan
For R2 : Mrs.C.Bhuvanasundari



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In C.M.A.No.223 of 2021

For Appellant : Mrs.C.Bhuvanasundari

For R1 : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan

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

C.M.A.No.1988 of 2020 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 23.10.2019 made in M.C.O.P.No.104 of 2016 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Tiruchengode.

C.M.A.No.223 of 2021 is filed by the Insurance Company to set aside the award dated 23.10.2019 made in M.C.O.P.No.104 of 2016 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Tiruchengode.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

3.The claimant filed M.C.O.P.No.104 of 2016 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Tiruchengode, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.01.2016.

4.According to the claimant, on the date of accident i.e., on 25.01.2016 at about 8.00 p.m., while he was riding in his Honda shine motorcycle bearing Registration No.TN-48-AZ-6616 on Tiruchengode - Kumaramangalam road, Rasipuram junction, near petrol bunk from West to East direction and was waiting to cross the road to reach Kongu Hotel on the right side, the rider of the Honda shine motorcycle bearing Registration No.TN-34-P-0075, who was coming in the same direction, rode the same in a rash and negligent manner, hit against the claimant's motorcycle and caused the accident. In the accident, the claimant sustained grievous injuries all over the body. Therefore, the claimant has filed the above claim petition claiming compensation against the respondents 1 and 2, owner and insurer of the Honda shine motorcycle bearing Registration No.TN-34-P-0075 respectively.

5.The 1st respondent, owner of the Honda shine motorcycle bearing Registration No.TN-34-P-0075, remained exparte before the Tribunal.



6.The 2nd respondent/Insurance Company insurer of the Honda shine motorcycle bearing Registration No.TN-34-P-0075 filed counter statement denying the averments made by the claimant and stated that the rider of the motorcycle belonging to the 1st respondent was not responsible for the accident. The rider of the Honda shine motorcycle bearing Registration No.TN-48-AZ-6616 alone rode the same in a rash and negligent manner with high speed, suddenly crossed the road and invited the accident. The rider of the Honda shine motorcycle bearing Registration No.TN-34-P-0075 belonging to the 1st respondent rode the same without possessing valid driving license at the time of accident and he was holding only learner's license on the date of accident. The 1st respondent, the owner of the Honda shine motorcycle bearing Registration No.TN-34-P-0075 has wilfully committed breach of policy condition. Therefore, the 2nd respondent is not liable to indemnify the owner of the vehicle. The 2nd respondent/Insurance Company has also denied the age, avocation, income and nature of injuries sustained by the claimant. In any event, the compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the claimant examined himself as P.W.1 and nine documents were marked as Exs.P1 to P9. The 2nd respondent/Insurance Company examined one Mr.G.P.Saravanan, Area Manager of the Insurance Company, as R.W.1 and marked four documents as Exs.R1 to R4.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.4,11,650/- as compensation to the claimant.

9. Not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with C.M.A.No.1988 of 2020 seeking enhancement of compensation. To set aside the said award dated 23.10.2019 made in M.C.O.P.No.104 of 2016, the 2nd respondent/Insurance Company has come out with C.M.A.No.223 of 2021 challenging the negligence fixed on the rider of the motorcycle belonging to the 1st respondent as well as quantum of compensation.

10.The learned counsel appearing for the claimant contended that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent. The rider of the motorcycle possessed driving license to ride the vehicle at the time of accident. The 2nd respondent failed to prove that the 1st respondent did not



possess valid driving license to ride the motorcycle at the time of accident. In the accident, the claimant sustained injuries and has taken treatment as in-patient in Ganga Medical Centre and Hospital, Coimbatore, for 18 days on two spells from 26.01.2016 to 08.02.2016 and 02.04.2016 to 05.04.2016. At the time of accident, the claimant was working as an Assistant Professor in Sengunthar Engineering College, Tiruchengode and was earning a sum of Rs.30,000/- per month. Due to the injuries, he could not do the work as he was doing earlier. The Tribunal ought to have adopted multiplier method in granting compensation. The compensation awarded by the Tribunal is meagre and prayed for dismissal of the appeal filed by the Insurance Company and for enhancement of compensation.

11.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal must conduct impartial inquiry as held by the judgment of the Hon'ble Apex Court reported in 2007 (5) SCC 428 (Oriental Insurance Company vs. Meena Variyal). The Tribunal must follow the basic principles to decide negligence as per the judgment referred to above. At the time of accident, the rider of the motorcycle belonging to the 1st respondent had possessed only learners driving license. Even after given notice, the 1st respondent did not produce driving license of the rider of the motorcycle. The 2nd respondent/Insurance Company has also issued notice to the concerned R.T.O., but they remained exparte before the Tribunal. The Tribunal considering the evidence let in by the 2nd respondent/Insurance Company ought to have ordered pay and recovery. The ambulance bills produced by the claimant dated 16.07.2016, 17.08.2016, 16.09.2016, 02.11.2016 and 05.11.2016 bear the same serial number - 1328, which shows manipulation done by the claimant. The medical expenses includes ambulance charges and hence, the Tribunal ought not to have awarded a sum of Rs.10,000/- towards transportation. The 2nd respondent is not responsible for the delay in disposing M.C.O.P. and hence, the 2nd respondent is not liable to pay any interest. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal and for dismissal of the appeal filed by the claimant.

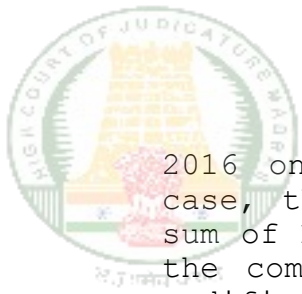
12.Heard through video-conferencing the learned counsel appearing for the claimant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials available on record.

13.It is the case of the claimant that while he was waiting to cross the road in the motorcycle, the rider of the motorcycle belonging to the 1st respondent came from behind in a rash and negligent manner, dashed on him and caused the accident. In the accident, the claimant sustained injuries. The Medical Board



examined the claimant and certified that the claimant suffered 10% disability. The claimant examined himself as P.W.1, filed F.I.R. and medical records to prove his case. It is the case of the 2nd respondent/Insurance Company that the accident occurred only due to negligence of the claimant and at the time of accident, the rider of the motorcycle belonging to the 1st respondent possessed only learners driving license and did not possess valid driving license to ride the motorcycle. The 2nd respondent did not examine any official from the R.T.O. to prove that the rider of the motorcycle belonging to the 1st respondent did not possess valid driving license to ride the motorcycle at the time of accident. In the absence of any evidence let in by the 2nd respondent/Insurance Company, the Tribunal relying on the judgment of the Punjab and Haryana High Court in FAO.No.4761 of 2012, dated 09.09.2013 (United India Insurance Company vs. Usarani and others) held that the 2nd respondent/Insurance Company is liable to pay compensation to the claimant. From the materials on record, it is seen that the 2nd respondent sent a notice dated 04.03.2019 and the same was marked as Ex.R2. But the 2nd respondent has not taken any effective steps to examine the official from the R.T.O. It is now well settled that learners license is also a valid license. F.I.R. was registered against the rider of the motorcycle belonging to the 1st respondent. The rider of the motorcycle did not lodge any complaint against the claimant or filed any objection to the contents of F.I.R. The Tribunal considering the evidence of claimant as P.W.1 and F.I.R., held that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.As far as quantum of compensation is concerned, it is the case of the claimant that he was working as an Assistant Professor in Sengunthar Engineering College, Tiruchengode and was earning a sum of Rs.30,000/- per month. He sustained injuries in the accident. Due to the injuries, he could not continue his work. He was referred to Medical Board. The Medical Board examined the appellant and certified that he suffered 10% disability. The claimant has not let in any evidence to show that he suffered functional disability. In the absence of evidence, the Tribunal adopted percentage method and granted compensation towards disability at the rate of Rs.3,000/- per percentage of disability. The accident is of the year 2016 and the amount awarded by the Tribunal per percentage of disability is meagre. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another], fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year

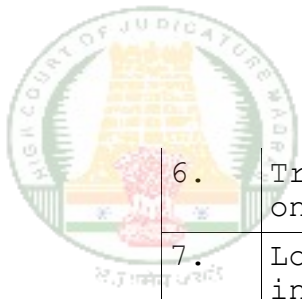


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2016 onwards, due to rise in cost of living. In the present case, the accident is of the year 2016. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.50,000/- (Rs.5,000/- X 10%).

14(i) The appellant has taken treatment as in-patient in Ganga Medical Centre and Hospital, Coimbatore, for 18 days on two spells from 26.01.2016 to 08.02.2016 and 02.04.2016 to 05.04.2016. The amounts granted by the Tribunal towards attendant charges and extra nourishment & damage to articles are meagre. Considering the nature of injuries and period of treatment taken by the claimant, the amounts awarded by the Tribunal towards attendant charges and extra nourishment are hereby enhanced to Rs.20,000/- each. The Tribunal has not awarded any compensation towards loss of amenities. Hence, a sum of Rs.20,000/- is awarded towards loss of amenities. The contention of the learned counsel appearing for the 2nd respondent/Insurance Company that the medical bills produced by the claimant includes ambulance charges and the Tribunal erroneously granted a sum of Rs.10,000/- towards transportation, is not acceptable. The claimant has taken treatment as in-patient in the hospital for 18 days and subsequently, continued his treatment as out-patient. The claimant and his family members would have spent some amount towards transportation. In view of the same, the amount granted by the Tribunal towards transportation is not interfered with. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	30,000	50,000	Enhanced
2.	Pain and suffering	15,000	15,000	Confirmed
3.	Extra nourishment and damage to articles	10,000	20,000	Enhanced
4.	Attendant charges	10,000	20,000	Enhanced
5.	Medical bills	2,88,650	2,88,650	Confirmed



6.	Transportation	10,000	10,000	Confirmed
7.	Loss of income	48,000	48,000	Confirmed
8.	Loss of amenities	-	20,000	Granted
	Total	4,11,650	4,71,650	Enhanced by Rs.60,000/-

15. In the result, C.M.A.No.1988 of 2020 filed by the claimant is partly allowed and C.M.A.No.223 of 2021 filed by the 2nd respondent/Insurance Company is dismissed and the compensation of Rs.4,11,650/- awarded by the Tribunal is hereby enhanced to Rs.4,71,650/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire award amount now determined by this Court along with interest and costs, after adjusting the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
The Subordinate Judge,
Tiruchengode.

Copy to:
The Section Officer
V.R.Section
High Court, Chennai.

+2cc to Mr.T.S.Arthanareeswaran, Advocate, S.R.No.8635

C.M.A.Nos.1988 of 2020 and 223 of 2021
and C.M.P.No.1490 of 2021

SR(CO)
CB(29/09/2021)