



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.1354 of 2010

and

M.P(MD)No.1 of 2010

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M/s.Oriental Insurance Company Ltd.,
Rep. by its Branch Manager,
Door No.555/O
Theni G.H.Road,
Theni District.

.. Appellant/2nd Respondent

vs.

1.K.G.Karuppiah

.. 1st Respondent/Petitioner

2.S.Rajendiran

.. 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award and decretal award dated 05.09.2006 made in M.C.O.P.No.103 of 2005 on the file of the Motor Accidents Claims Tribunal/Subordinate Court, Uthamapalayam.

For Appellant : Mr.K.Baskaran

For R1 : Mr.C.Sundaravadivel

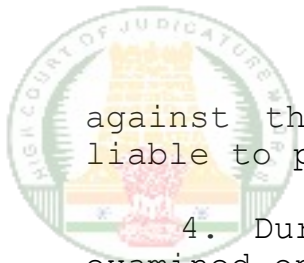
For R2 : No appearance

J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal/Subordinate Court, Uthamapalayam in M.C.O.P.No.103 of 2005, the Insurance Company has come up with this appeal.

2. This is a case of injury. The first respondent herein filed a claim petition claiming compensation of Rs.2,00,000/-. According to him, on 11.12.2001 at 06.00 p.m., he was travelling as a pillion rider in a TVS-50 bearing Registration No.TN-60-6922 on Cumbum-Gudalur main road. At that time, near Yuvaraj Theatre, a two-wheeler TVS Suzuki bearing registration No.TN-60-4849 driven by its driver in a rash and negligent manner dashed against him and he sustained injuries. Immediately, he was carried to Jawahar Hospital, Madurai, where he took treatment as Inpatient from 12.12.2001 to 20.12.2001. The second respondent is the owner of the two-wheeler and the appellant is the insurer of the said vehicle and hence, both are liable to pay compensation.

3. The claim petition was contested by the appellant stating that the accident did not take place as pleaded in the claim petition and in fact, the son of the claimant was riding the bike at the time of accident in a rash and negligent manner and dashed



against the TVS Suzuki and hence, the Insurance Company is not liable to pay compensation. The claim is exorbitant.

4. During trial, the claimant examined himself as P.W.1 and examined one Dr.Chachidhanandam as P.W.2. He also produced Ex.P1 to Ex.P10. On the side of the appellant no witness was examined and no documents were produced.

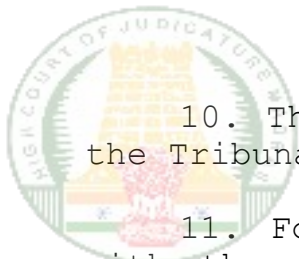
5. Upon consideration of the evidence adduced by the parties, the Tribunal held that the accident occurred due to the negligence of the rider of the first respondent and awarded compensation of Rs.91,750/- with 9% interest. Questioning the award, the present appeal has been filed.

6. Mr.K.Baskaran, learned counsel appearing for the appellant would contend that the Tribunal wrongly came to the conclusion that the driver of the offending vehicle was responsible for the accident and the vital documents have not been properly appreciated by the Tribunal. Further, the Tribunal has awarded a sum of Rs.62,200/- towards loss of income without any basis and adopted multiplier of '11' instead of awarding compensation on percentage of disability. The interest awarded by the Tribunal is excessive.

7. Per contra, Mr.C.Sundaravadivel, learned counsel appearing for the first respondent would submit that the Tribunal on proper appreciation of the evidence, has rightly come to the conclusion that the claimant sustained injury due to the negligence of the driver of the offending vehicle and the award is also reasonable and prayed for dismissal of the appeal.

8. A perusal of the records shows that the claimant was 55 years old on the date of accident and he was examined as P.W.1. According to the claimant, the vehicle was driven by his son Raja, due to rash and negligent driving of the second respondent, the accident occurred and he fell down and sustained grievous injuries. To corroborate the evidence of P.W.1, Ex.P1-FIR, Ex.P5-Judgment in a Criminal Case were marked. The driver of the vehicle pleaded guilty and paid the fine amount. Therefore, I am of the view that the contention of the learned counsel appearing for the appellant has no substance. Hence, the findings of the Tribunal is confirmed.

9. P.W.2-Doctor after examining the claimant and the medical records, assessed the disability at 38%. Ex.P10 is the disability certificate. Ex.P6 to Ex.P9 shows that the claimant has also taken treatment at Jawahar Hospital at Madurai. After scrutinising the evidence adduced by the claimant, the Tribunal has awarded a sum of Rs.62,200/- towards loss of income, Rs.500/- towards transportation, Rs.10,000/- for pain and suffering. The Tribunal has awarded a total sum of Rs.91,750/- including the medical expenses along with interest at the rate of 9% p.a.,



10. This Court is of the view that the compensation awarded by the Tribunal is just and reasonable.

11. For the foregoing reasons, I find no reason to interfere with the findings of the Tribunal. In that view, the appeal is dismissed and the award of the Tribunal is confirmed. The appellant/Insurance company is directed to deposit the entire award amount with accrued interest and costs as directed by the Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the award amount by making necessary application before the Tribunal, less the amount already withdrawn, if any. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The Motor Accidents Claims Tribunal,
Subordinate Court, Uthamapalayam.

2.The Record Keeper, (2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.BHASKARAN, Advocate (SR-15799[F] dated 15/04/2021)

C.M.A(MD) No.1354 of 2010
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SRK(CO)

KB(27.04.2021) 3P 5C