



WEB COPY

C.M.A.(MD)No.1230 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 27.07.2021

Delivered On : 09.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.1230 of 2013

The Branch Manager,
Iffco Tokyo General Insurance Company Ltd.,
Chennai. ..Appellant/respondent 3

Vs.

1.Perumal
2.J.Ravikumar ..1st despondent/petitioner
3.S.Radha ..2nd & 3rd respondent/Respondent 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 09.08.2011 made in M.C.O.P.No.243 of 2009 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Pudukkottai.

For Appellant	: Mr.S.Srinivasa Raghavan
For 3 rd Respondent	: Mr.T.Lenin kumar
RR1 & 2	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.243 of 2009 dated 09.08.2011, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Pudukkottai.

2.The appellant herein is the third respondent, the first respondent herein is the claimant and the respondents 2 and 3 herein are the respondents 1 and 2 in the claim petition. The first respondent has filed a claim petition in M.C.O.P.No.243 of 2009, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 18.01.2009. The Tribunal has awarded a sum of Rs.2,28,200/- (Rupees Two Lakhs Twenty Eight Thousand and Two Hundred only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.243 of 2009 is as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



On 18.01.2009, at about 05.30 p.m., the claimant was travelling in a TVS motorcycle bearing registration No.TN-55-K-7422. A car bearing registration No.TN-09-H-0887 came from the backside of the claimant and dashed against him and caused the accident. The car driver was responsible for the accident. The claimant claimed a sum of Rs.4,00,000/- (Rupees Four Lakhs only) as compensation.

4.Brief substance of the counter filed by the second respondent therein is as follows:

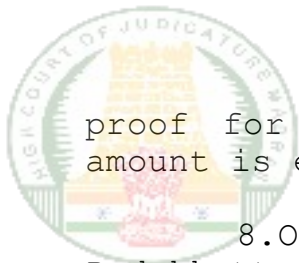
The second respondent denied the age, occupation and monthly income of the claimant. The nature of injuries sustained and the expense incurred are to be proved. There is no permanent disability. The injuries are simple in nature. The claim amount is excessive. The mode and manner of the accident is incorrect and misleading.

5.Brief substance of the counter filed by the third respondent therein is as follows:

The third respondent denied the age, occupation and monthly income of the claimant. It is false to state that the claimant is a lorry driver. There is no permanent disability. The claim is excessive. There is a delay in filing the FIR. FIR is not trustworthy. The owner and insurer of the TVS motorcycle are necessary parties. The two wheeler has no valid insurance policy. The first respondent driver has no valid driving licence. His licence expired on 05.08.2004 but the accident took place on 18.01.2009. Due to policy violation, the third respondent is not liable to pay compensation.

6.On the side of the petitioner therein, three witnesses were examined and 14 documents were marked. One document was marked as Ex.X1. On the side of the respondents therein, two witnesses were examined and one document was marked. After trial, the Tribunal has awarded a sum of Rs.2,28,200/- (Rupees Two Lakhs Twenty Eight Thousand and Two Hundred only) as compensation. The third respondent therein is directed to pay the compensation at the first instance and then to recover the same from the owners of the vehicle, the respondents 1 and 2. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

7.On the side of the appellant, it is stated that the Tribunal ought not to have ordered the third respondent to set aside the award and then to recover the same from the owners of the vehicle. By permitting the driver without valid driving licence, the owners of the vehicle is liable to pay compensation and the Tribunal ought to have fixed the liability only upon the owner of the vehicle. The disability is not functional. The Tribunal is wrong in fixing the compensation by applying multiplier method. There was no



proof for functional disability or loss of avocation. The award amount is excessive.

8.On the side of the appellant, it is stated that the RDO, Pudukkottai deposed that the driving licence of the first respondent expired on 05.08.2004 and the same was not renewed. The accident took place after five years from the date of expiry of the driving licence. The Tribunal failed to consider the judgments of the Hon'ble Apex Court in the proper perspective.

9.On the side of the appellant, it is further stated that the disability is only partial permanent disability and hence, there is no necessity to use multiplier method. In support of his contention, the judgment passed by the Hon'ble Supreme Court in the case of **Rajkumar v. Ajaykumar** reported in **2011 (1) ACJ 1** is cited.

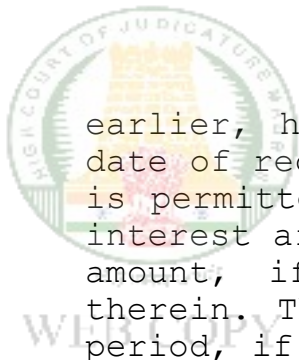
10.On the side of the third respondent, it is stated that the law is well settled and the compensation amount has to be paid by the insurance company at the first instance and the insurance company can recover the same from the owner of the vehicle.

11.The learned counsel for the third respondent has relied upon the judgments of the Hon'ble Supreme Court in the case of **Swaran Lata and Others v. Ram Chet and Others** reported in **2010 (3) SCC Crl 620** and **National Insurance Co. Ltd., v. Swaran Singh and others** reported in **2004 (1) TNMAC 104**.

12.It is seen that the law is well settled. As per recent the judgment of the Hon'ble Supreme Court, the insurance company can pay the compensation to the claimants and recover the same from the owner of the vehicle. The doctor fixed the disability as 35%. The disability certificate was marked as Ex.P8. The right leg bones were fractured. The injured was a lorry driver and the fracture of the bone will lead to functional disability and hence, the compensation by applying multiplier method is reasonable. The fixation of compensation under the other heads is also reasonable. Hence, there is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.243 of 2009 dated 09.08.2011, on the file of the Motor Accidents Claims Tribunal(Chief Judicial Magistrate), Pudukkottai.

13.In the result, this Civil Miscellenaous Appeal is dismissed. The first respondent is entitled to a sum of Rs.2,28,200/- (Rupees Two Lakhs Twenty Eight Thousand and Two Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

14.The respondents in claim petition are directed to deposit Rs.2,28,200/- (Rupees Two Lakhs Twenty Eight Thousand and Two Hundred only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited



earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw their respective shares with proportionate interest after deducting any amount received by them earlier. Excess amount, if any deposited shall be refunded to the respondents therein. The claimant is not entitled for interest for the default period, if there is any. No Costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Motor Accidents Claims Tribunal, (Chief Judicial Magistrate),
Pudukkottai.

Copy to

The Section Officer, (2C)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A. (MD)No.1230 of 2013
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SRK(CO)
KB(24.09.2021) 4P 4C