



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A (MD) No.1575 of 2013
and
MP (MD) No.2 of 2013

National Insurance Company Ltd.,
Rep. By its Divisional Manager,
33, Bharathidasan Salai,
Tiruchirapalli-1.

: Appellant/2nd Respondent

Vs.

1.M.Megavarnam

: 1st Respondent/Petitioner

2.S.Sakthivel

: 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 09.02.2012 made in MCOP No.131 of 2007 on the file of Motor Accident Claims Tribunal (Sub Court), Kulithalai.

For Appellant : Mr.N.Murugesan

For 1st Respondent : Mr.N.Sudhagar Nagaraj

JUDGMENT

Challenge made in this appeal is to the award, dated 09.02.2012 made in MCOP No.131 of 2007 on the file of Motor Accident Claims Tribunal (Sub Court), Kulithalai.

2.The brief facts of the case are that on 19.03.2004 at about 10.30 pm, when the claimant was travelling in the motor cycle TVS Suzuki TAK-2441 as a pillion rider, while driving by his friend Mr.Raja @ Rajadurai, near Trichy Cauvery (Old) Bridge, the Ambassador Car TNE-1443 came from the opposite direction in a rash and negligent manner and dashed against the motor cycle. In the accident, the claimant had sustained fracture of the right leg and immediately, he was taken to KMC Hospital, Trichy and thereafter, he took treatment in Bone and Joint Clinic at Woraiyur, Trichy. A claim petition was filed by the claimant seeking compensation of Rs.4,00,000/- on the ground that the offending vehicle caused the accident.



3.The claim was opposed by the appellant Insurance Company disputing the manner of accident and their liability to pay compensation.

4.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Car was responsible for the accident and awarded compensation of Rs.3,87,750/- together with interest @ 7.5 % p.a. Aggrieved by the award of the tribunal, the appellant Insurance Company is before this court.

5.Heard the learned counsel appearing on either side and perused the materials available on record.

6.It is mainly contended by the learned counsel for the appellant that the Ambassador Car has no fitness certificate at the time of the accident and the multiplier adopted by the tribunal is not correct and the quantum of compensation awarded by the tribunal is on the higher side and that the tribunal ought to have held for pay and recovery, since the offending vehicle has no fitness certificate at the time of accident, so the quantum is to be reduced. On the other hand, the learned counsel for the 1st respondent/claimant submitted that the award is reasonable, which does not warrant any interference of this court.

7.It is seen from the records that at the time of accident, the offending vehicle was insured with the appellant Insurance Company. It is the main contention of the appellant Insurance Company that at the time of accident, the offending vehicle has no fitness certificate. In this case, an official of the Appellant Insurance Company was examined as RW1. RW1 during his cross examination stated that at the time of accident, the offending vehicle was insured with their Company and the claimant is the 3rd party and there was no proof to the effect that the offending vehicle has no fitness certificate. As there was no reliable document produced on the side of the Insurance Company, the tribunal has rightly held that since the Insurance Company has not proved that at the time of accident, the offending vehicle has no fitness certificate, the Appellant Insurance Company is liable to pay the compensation to the claimant.

8.PW1 is the injured as well as the eye witness to the accident. A criminal case was registered against the driver of the offending vehicle. Ex.P1 FIR stands registered based on the complaint given by PW1. Ex.P10 charge sheet would show that after investigation, the police filed a final report against the Driver of the Car. PW1 has given evidence stating that due to the accident, he sustained 60% disability due to fracture on the left



side hip bone and head injury and he could not walk or stand for a prolong time and he was not able to do his regular work. To prove the above fact, on the side of the claimants, Ex.P13 Disability Certificate and Ex.P14 X-ray were marked.

9.It is not in dispute that at the time of accident, the age of the claimant was 33. The tribunal, based on his age and taking his monthly income as Rs.4,000/- and by applying the multiplier 16, has awarded Rs.2,30,400/- (Rs.4,000/- x 12 x 16 x 30/100) towards loss of earning capacity and future loss of income. Further, the Tribunal awarded Rs.95,350/- towards medical expenses, based on Exs.P4 and P5; Rs.12,000/- towards actual loss of income; Rs.20,000/- towards transportation and extra nourishment and Rs.30,000/- towards pain and sufferings and continuing permanent disability. In total, the tribunal has awarded Rs.3,87,750/- together with interest at the rate of 7.5% p.a. In the considered view of this court, the award is fair and reasonable and therefore, it is confirmed.

10.In the result, the Civil Miscellaneous Appeal is dismissed, confirming the award of the tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)

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To

The Subordinate Judge,
Subordinate Court,
Motor Accidents Claims Tribunal,
Kulithalai,
Karur District.

Copy to

The Record Keeper-2 copies
V.R Section,
Madurai Bench of Madras High Court,
Madurai.



+1 CC to Mr.N.MURUGESAN, Advocate (SR-7439[F] dated 26/02/2021)

+1 CC to Mr.N.SUDHAGAR NAGARAJ, Advocate (SR-7577[F] dated 26/02/2021)

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