



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CMA(MD)No.466 of 2021 &

CMP(MD)No.4057 of 2021

WEB COPY

The Branch Manager,
Reliance General Insurance Company Limited,
PLA Kanga Complex,
No.15A, 1st Cross, Thillai Nagar,
Trichy-18.

... Appellant/Respondent No.2

vs.

1.Arumugam
2.Pandiyan

... Respondent NO.1/Petitioner
... Respondent No.2/Respondent No.1

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 20.11.2020 in MCOP.No.51 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Pudukottai in so far as liability to pay compensation and the quantum of compensation awarded.

For Appellant : Mr.V.Sakthivel, Advocate
For Respondents : Mr.K.C.Maniyarasu, Advocate for R1

J U D G M E N T

The appellant filed this appeal against the Judgment and Decree dated 20.11.2020 in MCOP.No.51 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Pudukottai.

2.The case of the first respondent/claimant is that on 26.12.2015, at about 04.15 pm, when he was riding his TVS XL Super II motorcycle bearing Registration No.TN 55 AE 0400, an indica car bearing Registration No.TN 44 CD 8696 belonging to the first respondent and insured with the second respondent, came in a rash and negligent manner and dashed against the two wheeler, as a result of which, the first respondent/claimant sustained grievous injuries. Hence, he filed MCOP.No.51 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Pudukottai claiming compensation for the injuries sustained by him.

3.The Tribunal after analysing the entire evidence on record, awarded a sum of Rs.12,53,466/- together with interest at the rate of 7.5% per annum, as compensation to the first respondent/claimant. Questioning their liability and also the quantum of compensation awarded by the Tribunal, the appellant has filed this appeal.



4.The learned counsel for the appellant would submit that the first respondent/claimant was not wearing helmet at the time of the accident and he also had no valid driving licence on the date of the accident, hence, there is a violation of policy. He would further submit that the Tribunal erred in awarding a very high compensation of Rs.1,50,000/- under the head pain and sufferings. He would also submit that a private Doctor has issued the Disability Certificate fixing the disability at 32% and the Tribunal ought not have taken the same as it is, which is on the higher side.

5.The learned counsel for the first respondent/claimant would submit that the grounds raised by the appellant in this appeal were not raised by them before the Tribunal. The learned counsel would further submit that the first respondent/claimant has sustained injuries that are grievous in nature and considering the nature of injuries, the Tribunal has rightly awarded Rs.1,50,000/- towards pain and sufferings, which need not be disturbed. Therefore, he prayed for dismissal of the appeal.

6.The first ground raised by the appellant is that the first respondent/claimant was not wearing helmet at the time of accident. As rightly stated by the learned counsel for the first respondent/claimant, this ground was not raised by the Insurance Company before the Tribunal. The second ground raised by the appellant is that the first respondent/claimant was not in possession of valid driving licence on the date of accident. However, the Insurance Company has not filed any document to prove their contention. Another ground raised by the appellant is that the Tribunal was wrong in accepting the Disability Certificate issued by a private Doctor, fixing the disability at 32%, which is on the higher side. It is seen from the records that the first respondent/claimant sustained grievous injuries and fractures on his hip, chest, left shoulder and pelvic bone. In view of the injuries and fractures sustained by the first respondent/claimant, this Court is of the opinion that 32% disability fixed by the Doctor is reasonable. The accident is of the year 2015 and hence, the Tribunal is right in fixing Rs.3,000/- per percentage of disability and awarding Rs.96,000/- towards disability. Admittedly, it is clear that the injuries are grievous in nature and the Doctor has fixed the disability at 32%. However, this Court is of the opinion that Rs.1,50,000/- awarded by the Tribunal towards pain and sufferings is on the higher side and therefore, it is hereby reduced by Rs.50,000/- and Rs.1,00,000/- is awarded towards pain and sufferings. All other heads awarded by the Tribunal are hereby confirmed. It is made clear that only the compensation awarded under the head pain and sufferings is reduced from Rs.1,50,000/- to Rs.1,00,000/-.

7.The learned counsel for the appellant would submit that the appellant/Insurance Company has already deposited the entire amount to the credit of MCOP.No.51/2016 on the file of



the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Pudukottai.

8.In the result,

(i)The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii)The compensation awarded by the Tribunal is reduced from Rs.12,53,466/- to Rs.12,03,466/- with interest at the rate of 7.5% per annum.

(iii)Since the amount has already been deposited by the appellant/Insurance Company, the first respondent/claimant is at liberty to withdraw the same along with proportionate interest and costs after following due process of law.

(iv)The appellant/Insurance Company is at liberty to withdraw the amount that is in excess of the amount awarded by this Court together with proportionate interests and costs after following due process of law.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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 Chief Judicial Magistrate/
Motor Accident Claims Tribunal, Pudukottai.

Copy to

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

+1 CC to M/s.K.C.MANIYARASU, Advocate (SR-35736[F] dated 24/11/2021)
+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-35740[F] dated 24/11/2021)

CMA (MD) No.466 of 2021

23.11.2021

RS (24.02.2022) 3P-6C

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