



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 25.10.2021

Delivered On : 07.12.2021
CORAM

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THE HONOURABLE MRS. JUSTICE R. THARANI
C.M.A. (MD) No.394 of 2014
and
M.P. (MD) No.1 of 2014

HDFC ERGO General Insurance Co. Ltd.,
6th Floor, Leela Business Park,
Anderi Kurla Road,
Anderi, Mumbai.
Rep. By its General Manager.

Appellant / 2nd Respondent

Vs.

1.R.Muniandi
2.K.Mahendira Prabu

1st Respondent/Claimant
2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 15.02.2012 made in M.C.O.P.No.69 of 2011 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : No Appearance

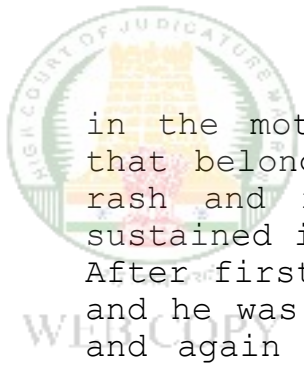
JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.69 of 2011 dated 15.02.2012, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

2.The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No.69 of 2011, claiming compensation for the injuries sustained by him, in an accident that took place on 24.06.2009. The Tribunal has awarded a sum of Rs.6,37,000/- (Rupees Six Lakhs and Thirty Seven Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.69 of 2011 is as follows:

On 24.06.2009, at about 07.30 a.m., when the petitioner was standing on the road side with the motorcycle verifying the repair



in the motorcycle, a tractor bearing registration No.TN-65-Z-5455 that belong to the first respondent was driven by its driver in a rash and negligent manner dashed against the petitioner and he sustained injuries. He was taken to Government hospital, Paramakudi. After first aid, he was taken to Madurai Meenakshi Mission hospital and he was admitted as 'in patient' from 24.06.2009 till 10.07.2009 and again he took treatment as 'in patient' from 23.07.2009 till 17.09.2009. He had undergone seven surgeries and a steel and mess were affixed. The petitioner is disabled. The petitioner claimed a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) as compensation.

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

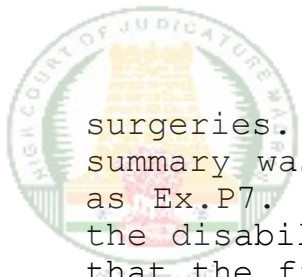
The claim is excessive. The driver of the tractor was not having valid driving licence at the time of accident. The first respondent violated the policy conditions. The second respondent is not liable to pay compensation.

5.The first respondent was set as exparte. On the side of the claimants, two witnesses were examined and 10 documents were marked and one material object was marked. On the side of the respondents, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.6,37,000/- (Rupees Six Lakhs and Thirty Seven Thousand only) as compensation to be paid by the appellant herein. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that the Tribunal failed to appreciate the evidence in the proper perspective. There is absence for proof for total disablement resulting in functional disability, the loss of avocation and income. There was no justification in applying multiplier method to assess the loss of income and the Tribunal failed to appreciate the evidence on record and failed to note that applying multiplier formula is not applicable to all the injury cases. The grant of Rs.3,12,120/- for permanent disability without any proof of functional disability is arbitrary. The award under various heads is excessive.

7.It is seen that the first respondent was not riding his two wheeler at the time of the accident. The two wheeler was stationed at that time. From the evidence of P.W.1 and Ex.P1, FIR, Ex.P3, Motor vehicle report, Ex.P4, chargesheet, it is clear that the driver of the tractor was responsible for the accident. There is no dispute regarding the validity of the insurance policy. The insurance company failed to prove that the driver of the tractor was not having valid driving licence. In the above circumstances, the liability fixed against the appellant is reasonable.

8.It is seen that the first respondent has undergone three



surgeries. The wound certificate was marked as Ex.P2. Discharge summary was marked as Ex.P5, the treatment particulars were marked as Ex.P7. Disability certificate was marked as Ex.P10. P.W.2 fixed the disability as 51%. The Trial Court has recorded the observation that the first respondent was not in a position to stand and he was allowed to sit and depose. Considering the disability and considering the documents filed on the side of the first respondent, and considering the age of the first respondent, the amount fixed by the Tribunal under loss of income (Rs.3,12,120), transportation expenses (Rs.2,500), extra nourishment (Rs.20,000), damages to the clothes (Rs.2,000) and damages to two wheeler (Rs.10,000) are reasonable. The Tribunal has awarded a sum of Rs.1,00,000/- (Rupees One Lakh only) towards pain and sufferings and as per Ex.P6 and Ex.P8, a sum of Rs.1,91,118/- (Rupees One lakh Ninety One Thousand One Hundred and Eighteen only) was awarded towards medical expenses, which are all reasonable.

9.In the above circumstances, there is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.69 of 2011 dated 15.02.2012, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

10.Hence, it is decided that the first respondent herein is entitled to a sum of Rs.6,37,000/- (Rupees Six Lakhs and Thirty Seven Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

11.The appellant herein is directed to deposit Rs.6,37,000/- (Rupees Six Lakhs and Thirty Seven Thousand only) with 7.5% interest from date of the claimpetition till the date of realization with cost and the amount has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the first respondent is permitted to withdraw the award amount, with interest after deducting any amount received by him earlier. The claimant is not entitled for interest for the default period, if there is any. Excess amount, if any deposited shall be refunded to the appellant herein. In the result, this Civil Miscellaneous Appeal is **dismissed**. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

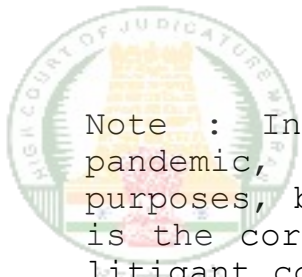
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Sub Assistant Registrar(CS)

MRN

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



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.

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To

1.The Motor Accidents Claims Tribunal, Chief Judicial Magistrate,
Sivagangai.

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-37700[F] dated
07/12/2021)

C.M.A. (MD) No.394 of 2014
07.12.2021

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