



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2862 of 2015

and

M.P.No.1 of 2015

The Divisional Manager,
M/s. New India Assurance Co. Ltd.,
City Divisional Office - 2,
No.863, Big Bazaar Street,
Coimbatore - 641 001.

.. Appellant/2nd Respondent

Vs.

1.Thirunavukarasu

... 1st Respondent/Petitioner

2.Vijayakamalraj

... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 03-06-2015 passed in M.C.O.P.No.332 of 2013 on the file of the Motor Accident Claims Tribunal Sub Court, Hosur, Krishnagiri District.

For Appellant : Mr.J.Chandran

For RR1 : Mr.K.Prasanna for
M/s. Mukund R.Pandiyan

For RR2 : No appearance

J U D G M E N T

(The matter is heard through "Video Conferencing")

This Civil Miscellaneous Appeal is filed to set aside the award dated 03-06-2015 passed in M.C.O.P.No.332 of 2013 on the file of the Motor Accident Claims Tribunal Sub Court, Hosur, Krishnagiri District.

2.The appellant is the 2nd respondent in M.C.O.P.No.332 of 2013 on the file of the Motor Accident Claims Tribunal Sub Court, Hosur, Krishnagiri District. The 1st respondent filed the said claim petition claiming a sum of Rs.16,00,000/- as



sustained by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.T.V.Gandhi was examined as P.W.2 and 11 documents were marked as Exs.P1 to P11. The appellant did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidences held that the accident has occurred only due to the rash and negligent driving by the driver of the car belonging to the second respondent and directed the appellant-Insurance Company to deposit a sum of Rs.9,82,400/- as compensation to the 1st respondent.

8. Challenging the liability fixed on them as well as the quantum of compensation awarded by the Tribunal in the award dated 03.06.2015 made in M.C.O.P.No.332 of 2013, the appellant-Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant contended that the accident occurred only due to the negligence on the part of the first respondent. In the FIR, which is registered based on the complaint given by the first respondent, he has stated that without noticing the Innova car which was parked in the left side of the road, he dashed on the backside of the car. At the time of accident, the first respondent did not possess valid driving license to ride the motorcycle. The first respondent is claiming compensation relying on FIR and the damages mentioned in the Motor Vehicle Inspector's report. As per the FIR, the first respondent alone was negligent and caused the accident. The damages mentioned in the Motor Vehicle Inspector's report of the car and motorcycle clearly shows that the 1st respondent only dashed on the backside of the car. The injuries sustained by the first respondent are only simple injuries. The first respondent has not produced any continuous treatment records. In the absence of any evidence with regard to loss of earning capacity and functional disability, the Tribunal erroneously adopted multiplier method and granted excessive amount as compensation for disability. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10. The learned counsel appearing for the first respondent submitted that the statement of the first respondent was recorded by the Sub Inspector of Police when he was taking



treatment in the Hospital. The accident occurred only due to the sudden turning of the car by the driver of the said car to the right side of the road. The first respondent as P.W.1 has deposed to this effect. The appellant has not let in any evidence to disprove the evidence of first respondent. The Tribunal considering the evidence of P.W.1 and contents of Exs.P1, P7 and P8 has held that the accident occurred only due to rash and negligent driving by the driver of the car. There is no error in the finding of the Tribunal with regard to negligence. The first respondent sustained Open Type II Fracture of left femur, Closed fracture left tibia, Extensor tendon tear left foot and multiple grievous injuries all over the body. Initially the first respondent has taken first aid treatment at Government Hospital, Hosur and thereafter he has taken treatment as inpatient at Vijay Hospital, Hosur for 8 days from 15.08.2012 to 22.08.2012 and further, he has taken outpatient treatment at Ashok Hospital on 22.08.2012. The first respondent was working as driver and was earning a sum of Rs.10,000/- per month. Due to injuries and disability suffered by him in the accident, he could not continue his work as driver. The Tribunal considering the nature of injuries and disability, rightly adopted multiplier method and granted compensation which are not excessive and prayed for dismissal of the appeal.

11.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13.From the materials on record, it is seen that the first respondent has filed claim petition claiming a sum of Rs.16,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.08.2012. According to the first respondent, while he was riding the two wheeler, the Innova Car belonging to the 2nd respondent which was parked on left side of the road, suddenly turned to right side of the road and the first respondent inspite of his efforts, could not control the two wheeler, dashed on the back side of the car. The first respondent has pleaded so in the claim petition and also as P.W.1, deposed to that effect. On the other hand, it is the case of the appellant that the accident occurred only due to the negligence on the part of the first respondent who dashed on the back side of the parked car. To substantiate their case the appellant relied on the F.I.R and Motor Vehicle Inspector's



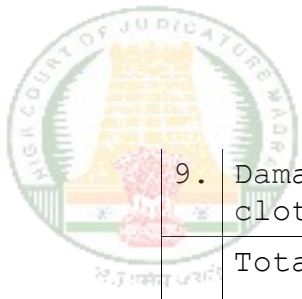
report. The first respondent gave a statement to that effect to the Sub Inspector of Police that he only dashed on the back side of the parked car and based on the said statement, F.I.R was registered. The appellant did not examine the driver of the car. The Tribunal considering the evidence of P.W.1 and Motor Vehicle Inspector's report / Exs.P7 and P8, held that the accident occurred only due to the negligence on the part of the driver of the car. It is well settled that contents of F.I.R. is not the basis for fixing negligence. The Tribunal must independently consider the oral and documentary evidence placed before it to fix the negligence. In the present case, the Tribunal considering the evidence of P.W.1 and contents of Exs.P7 and P8, fixed the negligence of the driver of the car. There is no error in the award of the Tribunal fixing the negligence on the part of driver of the car and liability on the appellant-Insurance Company.

14.As far as the quantum of compensation is concerned, according to the first respondent, he was working as driver and was earning Rs.10,000/- per month. The first respondent did not file any document and has not substantiated his contention. In the absence of any material evidence, the Tribunal following the judgment of Hon'ble Apex Court reported in 2014 ACJ 627, (Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited), fixed the monthly income of the 1st respondent at Rs.6,500/-. The first respondent examined P.W.2/Doctor and produced Exs.P9 and P10 to show that he suffered 60% disability. The Tribunal considering the evidence of P.W.2/Doctor and Exs.P9 & P10, held that 1st respondent suffered 60% disability. Having fixed 60% disability, the Tribunal adopted multiplier method by applying multiplier '18' and awarded compensation for disability. The first respondent has not let in any evidence to show that he lost his earning capacity and suffered functional disability. The Tribunal without there being any evidence and without giving any reason erroneously adopted multiplier method and granted excessive amount as compensation for which the first respondent is not entitled to. The first respondent is entitled to compensation only by adopting percentage method. The accident is of the year 2012 and the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the first respondent is entitled to a sum of Rs.1,80,000/- (Rs.3,000/- X 60% of disability) towards disability. The first respondent claimed that at the time of accident, he was working as driver and was earning Rs.10,000/- per month. The Tribunal, in the absence of any evidence with regard to avocation and income, fixed a sum of Rs.6,500/- per month as notional income of the first respondent. Considering the year of accident, age and



nature of work done by the first respondent, a sum of Rs.9,000/- per month is fixed as his notional income. Due to the injuries sustained by the first respondent in the accident, he would not have attended his work atleast for a period of five months. Thus, the first respondent is entitled to a sum of Rs.45,000/- (Rs.9,000/- X 5 months) towards loss of income. The Tribunal has not granted any amount towards pain and sufferings, loss of amenities and damages to clothes. Due to the injuries sustained by him in the accident, the first respondent would have suffered some pain. Therefore, he is entitled to a sum of Rs.25,000/- towards pain and sufferings, Rs.20,000/- towards loss of amenities and Rs.1,000/- towards damages to clothes. Initially the first respondent has taken first aid treatment at Government Hospital, Hosur and thereafter he has taken treatment as inpatient at Vijay Hospital, Hosur for 8 days from 15.08.2012 to 22.08.2012 and further, he has taken outpatient treatment at Ashok Hospital on 22.08.2012. Considering the nature of injuries and period of treatment taken by the first respondent, the amounts awarded by the Tribunal towards extra nourishment, transportation and attendant charges are enhanced to Rs.10,000/-, Rs.7,500/- and Rs.15,000/- respectively as the amounts awarded by the Tribunal are meagre. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	8,42,400/-	1,80,000/-	Reduced
2.	Medical expenses	1,21,000/-	1,21,000/-	Confirmed
3.	Transportation	5,000/-	7,500/-	Enhanced
4.	Extra nourishment	5,000/-	10,000/-	Enhanced
5.	Attendant charges	9,000/-	15,000/-	Enhanced
6.	Pain and sufferings	-	25,000/-	Granted
7.	Loss of amenities	-	20,000/-	Granted
8.	Loss of income	-	45,000/-	Granted



9. Damages to clothes	-	1,000/-	Granted
Total	Rs.9,82,400/-	Rs.4,24,500/-	Reduced by Rs.5,57,900/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,82,400/- is hereby reduced to Rs.4,24,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.332 of 2013 on the file of the Motor Accident Claims Tribunal Sub Court, Hosur, Krishnagiri District. On such deposit, the first respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.332 of 2013, if the entire award amount has been already deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

ata/krk

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Hosur, Krishnagiri District.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.J.Chandran, Advocate SR.No.4129

+1cc to M/s.Mukund R.Pandian, Advocate SR.No.3801

C.M.A.No.2862 of 2015

CP(CO)

GN(01/03/2022)