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C.M.A.Nos.2338 & 2853 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2022

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

**C.M.A.Nos.2338 and 2853 of 2021
and
C.M.P.No.16391 of 2021**

C.M.A.No.2338 of 2021

Saravanan

... Appellant

Vs.

1.E.Juno jebaraj

2.Oriental Insurance Co.Ltd.,
'Oriental House', 2nd Floor,
Old No.115, New No.216,
Prakasam Road, Broadway,
Chennai – 600 018.

... Respondents



C.M.A.Nos.2338 & 2853 of 2021

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree in M.C.O.P.No.2956 of 2014 dated 20.02.2020 on the file of the Motor Accident Claims Tribunal / (Special Sub-Court No.II, Motor Accident Claim Petitions) Small Causes Court, Chennai.

For Appellants : M/s.Ramya V.Rao

For Respondents : R1 – Notice served.
Mr.S.Arunkumar for R2.

C.M.A.No.2853 of 2021

The Oriental Insurance Co.Ltd.,
'Oriental House', 2nd Floor,
Old No.115, New No.216,
Prakasam Road, Broadway,
Chennai – 600 018.

... Appellant

Vs.

1.S.Saravanan

2.E.Juno Jebaraj

... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree in M.C.O.P.No.2956



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of 2014 dated 20.02.2020 on the file of the Motor Accident Claims Tribunal /

(Special Sub-Court No.II, Motor Accident Claim Petitions) Small Causes Court,

Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents : M/s.Ramya V.Rao for R1.
R2 – Notice not ready

COMMON JUDGMENT

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

Both the appeals have been filed challenging the award passed in M.C.O.P.No.2956 of 2014 on the file of Motor Accident Claims Tribunal / (Special Sub-Court No.II, Motor Accident Claim Petitions) Small Causes Court, Chennai dated 20.02.2020 and hence, they are disposed of by this common judgment.

2.C.M.A.No.2338 of 2021 has been filed by the claimant aggrieved by the quantum awarded by the Tribunal and prayed for enhancement of compensation and C.M.A.No.2853 of 2021 has been filed by the Insurance Company challenging



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the finding on negligence and the quantum awarded by the Tribunal. Parties in these appeals are hereinafter referred by their rank in the appeal in C.M.A.No.2338 of 2021. (for the sake of convenience)

3.The appellant filed a claim petition in M.C.O.P.No.2956 of 2014 on the file of the Motor Accident Claims Tribunal stating that on 07.07.2013 at about 23.10 hours at East Coast Road opposite to panaiyur fish market, the appellant was riding pillion in the motor cycle bearing registration no.TN 01 AL 0705 and at that time, an unknown indica car came in the opposite direction in a rash and negligent manner and dashed against the vehicle in which the appellant was riding pillion, as a result of which, the appellant and the rider of the two wheeler suffered injuries. The appellant, therefore, filed a claim petition for a compensation of Rs.1,50,00,000/- for the injuries sustained by him.

4.The first respondent remained exparte before the tribunal. The second respondent / insurance company filed a counter statement stating that even as per



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the claim petition filed by the appellant, the accident was caused due to the rash

and negligent act of the driver of an unknown vehicle namely an indica car.

Further, the Police records namely, the First Information Report shows that the appellant and the deceased one Rajesh were hit by an unknown indica car and the

First Information Report was registered only as against the driver of Indica car.

Hence, the second respondent / insurance company stated that the accident was

caused by the deceased D.Rajesh who rode the motorcycle in a drunken condition

with two pillion riders. The police record namely the First Information Report and

the accident register issued by the Global hospital & Health city, 439 Cheran

Nagar, Perumbakkam, Chennai confirmed the above said averments. The drunken

riding of the motorcyle by the deceased along with two pillion riders not only

amounts to violation of the terms of the insurance policy but also against the

traffic rules prescribed under the Motor Vehicle Act. Hence, the second

respondent / insurance company is not liable to pay compensation and prayed for

dismissal of the claim petition.

5.Before the Tribunal, the appellant examined himself as PW1 and marked exhibits Ex.P.1 to Ex.P.35. The second respondent examined his officer as RW1



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and marked Ex.R.1to Ex.R.3. The disability certificate issued by the Medical Board was marked as Ex.C1.

6.The Tribunal after considering the pleadings, oral and documentary evidence held that the evidence disclosed that the accident took place on account of the rash and negligent riding of the deceased D.Rajesh and hence the owner of the vehicle is liable to pay compensation to the appellant who was riding pillion in the said motor vehicle as he was a third party. The Tribunal also held that even though the appellant was in an inebriated condition at the time of accident, in the absence of any evidence to show that he was not riding the vehicle, the second respondent cannot contend that he is not entitled for compensation. The Tribunal therefore found that the accident was caused due to the rash and negligent act of the rider namely deceased D.Rajesh and held that the second respondent / insurer of the offending vehicle is liable to pay compensation. Further, the Tribunal held that the appellant is entitled to a total compensation of Rs.24,93,900/-.

7.Challenging the said award passed by the Tribunal, this present Civil Miscellaneous Appeal has been filed.



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8.The learned counsel for the appellant submitted that the Tribunal ought to have adopted the multiplier method as the disability certificate specifies that it is “a neurological locomotive disability”. The said disability suggests that the appellant is suffering from a neurological disorder. By virtue of this certificate, it is established that he has lost his earning capacity and therefore, the Tribunal ought to have seen that the appellant suffered functional disability. The compensation should have been awarded by adopting the multiplier method and prayed for enhancing the compensation awarded by the Tribunal by allowing the C.M.A.No.2338 of 2021 and dismissing C.M.A.No.2853 of 2021 filed by the second respondent.

9.The learned counsel for the second respondent / insurance company who is the appellant in C.M.A.No.2853 of 2021 has challenged the award on the finding of negligence as well as quantum of compensation awarded by the Tribunal. The learned counsel for the second respondent / insurance company submitted that the finding on negligence is erroneous. Even as per the claim petition, the accident had occurred due to the rash and negligent driving of an



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unknown indica car. Therefore, the Tribunal ought not to have held that the accident took place due to the rash and negligent driving of the deceased D.Rajesh, rider of the two wheeler. The learned counsel further submitted that the deceased Rajesh was in an inebriated condition and there were two pillion riders in the two wheeler and therefore, by allowing the vehicle to be used by three persons, the owner of the vehicle violated the terms of the insurance policy. Therefore, the second respondent / insurance company is not liable to pay compensation. The compensation awarded by the Tribunal under different heads are highly excessive and prayed for setting aside the award of the Tribunal by allowing C.M.A.No.2853 of 2021 and dismissing C.M.A.No.2338 of 2021 filed by the appellant for enhancement.

10.In reply, the learned counsel for the appellant submitted that there was only one claim petition by one pillion rider namely the appellant and therefore, the argument that there are two pillion riders and therefore the second respondent / insurance company is not liable to pay compensation, is not sustainable.



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11. We have heard the learned Counsel on both sides, perused the pleadings, evidence and documents available on record.

12. We find that though the appellant has stated in the claim petition that the accident was caused due to the rash and negligent driving of an unknown Indica car, there is evidence to show that the accident was caused due to the rash and negligent riding of the two wheeler driven by the deceased D.Rajesh. Ex.R1 is a investigation report filed by the second respondent which states that the accident was caused because of the two wheeler dashing against a road culvert due to overspeed. Further we find from the contents of the First Information Report that the informant heard from the onlookers that the accident was caused due to an unknown Indica car. That was an hear say information. The second respondent had not examined any other witness to suggest that the two wheeler was dashed by an unknown Indica car. On the other hand, their one document viz., Ex.R.1 shows that the accident occurred due to the negligent riding of the rider, D.Rajesh. The second respondent / insurance company is therefore, liable to compensate the appellant who is a third party so far as the insurance policy for the two wheeler is concerned.



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13. As regards the quantum, we find that the Tribunal had taken into consideration, Ex.C.1 the disability certificate issued by the Medical Board and found that it has been mentioned as “His disability is neurological locomotive disability due to trauma and his percentage is 60% temporary”. The Tribunal therefore, found that there is no evidence to suggest that the appellant had suffered functional disability. The learned counsel for the appellant submitted that he had produced resignation letter to show that the victim had resigned from his job. We are of the view that a resignation by itself would not establish functional disability. The appellant ought to have established that he had suffered a total functional disability and was unable to get any employment thereafter. Further, in the said service certificate, Ex.P.29 marked on behalf of the appellant, the reason for resignation is not mentioned. In the absence of the same, we cannot infer that the resignation was due to the functional disability. In the absence of any evidence adduced on behalf of the appellant to establish his total functional disability, we are of the view that the Tribunal was justified in not adopting the multiplier method.



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14. Further, the salary fixed by the Tribunal for the appellant at the relevant time is Rs.33,251/- and the Tribunal had assessed the loss of income at Rs.3,99,012/- (Rs.33,251 x 12) for one year. We see no reason to interfere with the said award of the Tribunal. The Tribunal had assessed the disability at 60% based on Ex.C.1 report and as per the Judgment reported in **“2013 (2) TN Mac 583”** in **“National Insurance Company Ltd. Vs. G.Ramesh”**, the Tribunal fixed Rs.3000/- for each percentage of disability and awarded Rs.1,80,000/- towards permanent disability. We see no reason to interfere with the compensation awarded under the said head also. Further, the award of compensation in all the other heads are justified. The Tribunal had thus awarded a total compensation of Rs.24,93,900/- which is just and reasonable.

15. In the result, the Civil Miscellaneous Appeal filed by the Claimant in C.M.A.No.2338 of 2021 and the Civil Miscellaneous Appeal filed by the second respondent / Insurance Company in C.M.A.No.2853 of 2021 are liable to be dismissed and hence, dismissed. The Judgment and decree dated 20.02.2020 made in M.C.O.P.No.2956 of 2014 on the file of the Special Sub Court II, Motor Accident Claims Tribunal, Small Causes Court, Chennai is confirmed. The second



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respondent / insurance company is directed to deposit the award amount together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit along with interest and costs, less the amount already deposited, as per the direction given by the Tribunal within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant is permitted to withdraw the award amount as per the direction of the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

(V.M.V., J) (S.M., J)
25.11.2022

ay

Index : Yes / No

V.M.VELUMANI,J.
and
SUNDER MOHAN,J.

ay

To

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1. The Motor Accident Claims Tribunal /
(Special Sub-Court No.II, Motor Accident
Claim Petitions), Small Causes Court,
Chennai.

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

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and
C.M.P.No.16391 of 2021

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