



C.M.A(MD)Nos.1063 & 1215 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.10.2022

Pronounced on : 28.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)Nos.1063 & 1215 of 2012

C.M.A(MD)No.1063 of 2012

Dharmaraj

... Appellant /petitioner

Vs

1.Kannan

2.The Branch Manager,
The Royal Sundaram Alliance Insurance
Company Limited,
No.176-D.F Trivandrum Road,
Vannarpettai, Tirunelveli.

... Respondents / Respondents

C.M.A(MD)No.1215 of 2012

The Branch Manager,
Royal Sundaram Alliance Insurance
Company Limited,
No.176-D.F Trivandrum Road,
Vannarpettai,
Tirunelveli.

... Appellant / 2nd Respondent

Vs

1.Dharmaraj

... 1st respondent / petitioner

2.Kannan

... 2nd respondent / 1st respondent



C.M.A(MD)Nos.1063 & 1215 of 2012

COMMON PRAYER :-

WEB COPY

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 18.04.2012, passed in MCOP No.252 of 2011 on the file of the Motor Accidents Claims Authority, (Chief Judicial Magistrate), Tirunelveli.

In C.M.A.(MD)No.1063/2012

For Appellant : Mr.T.Selvakumaran
For R1 : No appearance
For R2 : Mr.S.Srinivasa Raghavan

In C.M.A.(MD)No.1215/2012)

For Appellant : Mr.S.Srinivasa Raghavan
For R1 : Mr.T.Selvakumaran
For R2 : No appearance

COMMON JUDGMENT

The Civil Miscellaneous Appeal in C.M.A(MD)No.1063 of 2012 is filed against the order in MCOP No.252 of 2011 on the file of the Motor Accidents Claims Authority, (Chief Judicial Magistrate), Tirunelveli. A Cross Appeal is filed in C.M.A(MD)No.1215 of 2012.



C.M.A(MD)Nos.1063 & 1215 of 2012

2.In C.M.A(MD)No.1063 of 2012, the appellant is the claimant.

Respondents are the respondents in the claim petition. In C.M.A(MD)No. 1215 of 2012, the appellant is the second respondent, first respondent herein is the claimant. Second respondent is the first respondent in the claim petition.

3.Brief substance of the claim petition is as follows:

On 11.07.2011, at about 7.30 p.m., while the petitioner was riding a motorcycle bearing registration number TN 76 X 4664, a car bearing registration number TN 72 AX 0254, without observing the signal given by the opposite side vehicle, came to the wrong side of the road and hit the petitioner's motorcycle. The petitioner sustained multiple injuries. He was taken to the Government Hospital and after getting first aid, he was taken to Tirunelveli Medical College Hospital and he was admitted as an inpatient. He took treatment for 15 days as inpatient. The petitioner claimed a sum of Rs.5,00,000/- as compensation.

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



C.M.A(MD)Nos.1063 & 1215 of 2012

The injuries are simple in nature. The petitioner has to prove his age, avocation, manner of accident and the income. The accident did not happen due to the rash and negligent driving of the driver of the first respondent. It was the petitioner, due to his old age and due to the darkness, who was unable to notice the upcoming vehicle, suddenly took a right turn and stopped the vehicle on the middle of the road. Though the driver of the vehicle applied the brake, the accident has happened due to the negligence and careless driving of the petitioner. The vehicle was insured with the second respondent. The first respondent is not liable to pay compensation. The award claimed is excessive.

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

The petitioner is not entitled to any compensation. The petitioner sustained only simple injuries. The petitioner has to prove the age, avocation, manner of accident and the income. The driver of the first respondent was not having valid driving licence. The vehicle did not have a valid permit. The amount claimed is excessive.



C.M.A(MD)Nos.1063 & 1215 of 2012

WEB COPY

6.Two witnesses were examined and eleven documents were marked on the side of the petitioner. Two witnesses were examined and two documents were marked on the side of the respondent. The Tribunal has awarded a sum of Rs.1,32,000/- as compensation, to be paid by the second respondent.

7.Against the award, a claimant filed the appeal in C.M.A(MD)No.1063 of 2012 for enhancement of compensation on the following grounds:

The Tribunal ought to have awarded compensation by applying multiplier method. Considering the fact that the appellant sustained fracture over the shaft of left femur, left hip, the Tribunal ought to have calculated the loss of income as Rs.6,60,000/- by applying multiplier 11. Considering the injuries, the compensation can be awarded under both the heads of for permanent disability and for loss of income. The Tribunal ought to have awarded Rs.25,000/- towards pain and sufferings, Rs.1,20,000/- towards 60% of disability, Rs.50,000/- towards loss of amenities, Rs.15,000/- towards transport expenses, Rs.50,000/- towards attendant charges and extra nourishment.



C.M.A(MD)Nos.1063 & 1215 of 2012

8. Against the award, the second respondent filed a cross appeal in C.M.A(MD)No.1215 of 2011 on the following grounds:

The Tribunal ought to have directed the insurance company to compensate the claim at the first instance and to recover the same from the owner of the vehicle. There was no valid or effective driving licence to the driver of the insured vehicle. The same amounts to breach of the conditions and that the insurance company is to be permitted to recover the compensation amount from the owner of the vehicle.

9. On the side of the claimant it is stated that the disability is 60%. The Tribunal has awarded only Rs.90,000/- towards disability and the amount has to be enhanced at least as Rs.3000/- per percentage of disability. On the side of the insurance company it is stated that there is no functional disability and that there is no necessity to apply multiplier method.

10. As per the judgment of this Court reported in **2017(2) TN MAC 829** in the case of **Sathiyakala Vs C.Kulandaisamy**, it is decided that the petitioner is entitled to Rs.3000/- per percentage of disability. Hence, for 60% disability, the claimant is entitled to Rs.1,80,000/- as compensation.



C.M.A(MD)Nos.1063 & 1215 of 2012

11.On the side of the claimant / appellant, it is stated that the Tribunal has awarded Rs.9,000/- as loss of income towards partial loss of income and the same has to be enhanced. The Tribunal has awarded Rs.9000/- as loss of income for the period of treatment from 11.07.2011 till 30.07.2011, for a period of one month. Considering the period of treatment and the period of rehabilitation, a sum of Rs.27,000/- is granted.

12.The Tribunal awarded Rs.3000/- towards transport expenses, Rs. 15,000/- towards extra nourishment and attendant charges, Rs.15,000/- towards medical expenses.

13.It is seen that the claimant took treatment as inpatient for a period one month. Hence, the compensation for pain and suffering is enhanced to Rs.20,000/-. The claimant is entitled to Rs.10,000/- towards loss of amenities, Rs.3000/- towards transport expenses, Rs.20,000/- towards medical attendant charges and extra nourishment.

14.The award of the Tribunal is modified as follows:

For disability	- Rs.1,80,000/-
Loss of income	- Rs. 27,000/-



C.M.A(MD)Nos.1063 & 1215 of 2012

WEB COPY

Pain and sufferings - Rs. 20,000/-

Attendant charges and
Extra nourishment - Rs. 20,000/-

Loss of amenities - Rs. 10,000/-

Transport expenses - Rs. 3,000/-

Rs.2,60,000/-.

In total, the claimant is entitled for **Rs.2,60,000/-** as compensation.

14.On the side of the appellant in C.M.A(MD)No.1215 of 2012, insurance company it is stated that the driver of the vehicle was not having valid driving licence at the time of accident and that there was no badge endorsement in the driving licence and it is stated that the appellant / insurance company is to be permitted to recover the compensation amount from the owner of the vehicle after paying the same to the claimants at the first instance.

15.The law is now well settled. A judgment of the Hon'ble Supreme Court reported in **2017 (2) TN MAC 145(SC)** in the case of **Mukund Dewangan vs. Oriental Insurance Co.Ltd.**, is referred by the Court, wherein



C.M.A(MD)Nos.1063 & 1215 of 2012

it is held that there was no necessity for holder of LMV to obtain specific endorsement to drive Transport Vehicle.

"Held, 'LMV' under Section 2(21) includes Transport Vehicles of that category as per weight prescribed in Section 2(21) read with 2(15) and 2(48) - Therefore, no separate endorsement required to be obtained by holder of LMV Licence to drive Transport Vehicle - Decisions in Prabhu Lal, Roshanben and Angad Kol taking contra view, overruled - Decision in Annappa partly overruled."

No badge endorsement in the driving licence is necessary, if the weight of an unloaded vehicle is below 7000 kgs.

16.In the above circumstances, C.M.A(MD)No.1063 of 2012 is allowed and C.M.A(MD)No.1215 of 2012 is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,32,000/- to Rs.2,60,000/- (Rupees Two Lakhs Sixty Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The insurance company is directed to deposit the entire compensation of Rs.2,60,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the



C.M.A(MD)Nos.1063 & 1215 of 2012

date of deposit and proportionate costs to the credit of MCOP No.252 of 2011 on the file of the Motor Accidents Claims Authority, (Chief Judicial Magistrate), Tirunelveli, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimant is permitted to withdraw the entire award amount of Rs.2,60,000/- with proportionate interest.

28.11.2022

Index: Yes / No
Internet : Yes / No

pnn

To

- 1.The Motor Accidents Claims Authority, (Chief Judicial Magistrate),
Tirunelveli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.M.A(MD)Nos.1063 & 1215 of 2012

R. THARANI, J

pnn

C.M.A(MD)Nos.1063 & 1215 of 2012

28.11.2022