



C.M.A.(MD)Nos.235 and 236 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.06.2022

Delivered On : 06.09.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)Nos.235 and 236 of 2012

C.M.A.(MD)No.235 of 2012

United India Insurance Company Limited,

23-E, E.V.R. Road, Puthoor,

Trichy -17.

.. Appellant

Vs.

1.S. Sridhar

2.Vijay Arumugam

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 29.04.2011, made in M.C.O.P.No.387 of 2005, on the file of the Motor Accident Claims Tribunal – I Additional Subordinate Judge, Tiruchirappalli.

For Appellant

: Mr.N.Dilip Kumar

For Respondent No.2

: No appearance

For Respondent No.1

: Mr.N.Sudhagar Nagaraj



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C.M.A.(MD)No.236 of 2012

United India Insurance Company Limited,
23-E, E.V.R. Road, Puthoor,
Trichy -17.

.. Appellant

Vs.

1.J.Babu

2.Vijay Arumugam

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 29.04.2011, made in M.C.O.P.No.797 of 2005, on the file of the Motor Accident Claims Tribunal – I Additional Subordinate Judge, Tiruchirappalli.

For Appellant	: Mr.N.Dilip Kumar
For Respondent No.2	: No appearance
For Respondent No.1	: Mr.N.Sudhagar Nagaraj

COMMON JUDGMENT

C.M.A.(MD)No.235 of 2012 has been filed against the award, dated 29.04.2011, made in M.C.O.P.No.387 of 2005, on the file of the Motor Accident Claims Tribunal – I Additional Subordinate Judge, Tiruchirappalli. 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 original M.C.O.P. Petition.



C.M.A.(MD)Nos.235 and 236 of 2012

WEB COPY 2. C.M.A.(MD)No.236 of 2012 has been filed against the award, dated 29.04.2011, made in M.C.O.P.No.797 of 2005, on the file of the Motor Accident Claims Tribunal – I Additional Subordinate Judge, Tiruchirappalli. 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 original M.C.O.P. Petition.

3. Brief substance of the claim petition in M.C.O.P.No.387 of 2005 is as follows:

On 26.07.2004, at about 11.30 pm., while the petitioner / Sridhar was riding a two wheeler-TVS Champ with one Babu as a pillion rider along the Trichy Bharathidhasan road, in a slow and steady manner, observing the road Rules, a Yamaha, motor bike bearing Registration No.TN-45-R-4111 came from the opposite direction in a rash and negligent manner, dashed against the TVS Champ. The petitioner sustained injuries and his right leg toes were fractured and that the second toe was removed. He sustained fracture in the shoulder and sustained multiple injuries. He claimed a sum of Rs.1,80,000/- as compensation.

4. Brief substance of the petition in M.C.O.P.No.797 of 2005 is as follows:-



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In the accident mentioned above, the petitioner/ Babu travelled as a pillion rider. He sustained fracture in the right hand, right foot and he claimed a sum of Rs.1,80,000/- as compensation.

5. Brief substance of the counter filed by the first respondent in both the petitions in M.C.O.P.Nos.387 and 797 of 2005 is as follows:-

The vehicle was insured with the second respondent at the time of accident. There is a delay of 14 days in registering the F.I.R. The first respondent admitted guilty and paid fine before the Criminal Court. The second respondent is liable to pay compensation. The age, avocation, and income of the petitioners are to be proved.

6. Brief substance of the counter filed by the second respondent in both the petitions in M.C.O.P.Nos.387 and 797 of 2005 is as follows:-

The first respondent vehicle was not at all involved in the accident. The petitioners' vehicle hit against some unknown vehicle. Only for the purpose of claiming compensation, the first respondent vehicle was impleaded in the case by way of a false complaint, after a lapse of 15 days from the date of accident. Therefore, this respondent is not at all responsible to pay compensation. The date of accident, manner of accident are all denied. The nature of injuries, period of



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treatment, disability are all denied. The occurrence has happened only due to the rash and negligent driving of the rider of the TVS Champ. The rider of the TVS Champ has no driving licence and has no valid Insurance or R.C., at the time of accident. The rider of the Yamaha bike also has no driving licence at the time of accident. The amount claimed by the petitioners is highly excessive.

7. On the side of the claimants, 3 witnesses were examined and 12 documents were marked. On the side of the respondents, 2 witnesses were examined and 2 document were marked. One document was marked as Ex.X1.

8. After considering both sides, the Tribunal awarded a sum of Rs.2,17,080/-for the injuries sustained by the rider of the TVS Champ vehicle / petitioner in M.C.O.P.No.387 of 2005. Against the award in M.C.O.P.No.307 of 2005, the appellant/ Insurance Company has filed C.M.A.(MD)No. 235 of 2012.

9. The Tribunal has awarded a sum of Rs.2,00,560/- for the injuries sustained by the pillion rider / petitioner in M.C.O.P.No.797 of 2005. Against the award, the appellant / Insurance Company has filed C.M.A.(MD)No. 236 of 2012.



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10. The grounds of appeals in both the appeals are as follows:-

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The Tribunal has erred in fixing the liability on the driver of the second respondent. The definite case of the appellant is that the vehicle, Yamaha Motor cycle bearing Registration No. TN-45-R-4111 was not involved in the accident. The alleged accident was a case of 'hit and run' and the Yamaha motorcycle was substituted in collusion with the second respondent herein. The Tribunal failed to appreciate the evidence of R.W.1 and Ex.R1 – Investigation Report. The investigator has enquired the father of the first respondent / claimant and recorded his statement on 24.05.2009, wherein, the father of the first respondent has stated that his son, the claimant hit against a barricade fixed in the middle of the road. The Tribunal has failed to appreciate the accident register, wherein, it was mentioned as a 'hit and run' case. The Tribunal failed to consider that FIR was registered after a delay of 15 days. The delay was due to the fixing of a vehicle and to find out a vehicle owner, who could help the claimant to claim compensation. When the claim itself is only for Rs.1,80,000/-, the Tribunal has erred in awarding of Rs.2,17,080/- and Rs.2,00560/- respectively. P.W.3-Doctor did not depose that the first respondent was unfit to do any work and that a sum of Rs.1,98,000/-, towards permanent disability is highly excessive and arbitrary.



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11. On the side of the appellant, it is stated that payment of fine alone is not a conclusive proof and that the Insurance Company is not liable to pay compensation. On the side of the appellant, it is stated that the Investigation report reveals that the vehicle was not at all involved in the accident. The father of the claimant, by name, Sridhar has given a letter that an unknown vehicle hit the TVS Champ. There was no damage to both the vehicles, alleged to have involved in the accident. The rider of the Yamaha bike pleaded guilty and he has paid the fine.

12. It is stated that the accident took place due to the collusion of two vehicles, one was a TVS Champ, wherein, the claimants were the rider and the pillion rider, the other one was a Yamaha bike that belonged to the second respondent herein. Both the vehicle came from opposite directions and there was a head on collusion.

13. On the side of the first respondent /claimant, it is stated that the occurrence has took place on 26.07.2004. The insurance company failed to refer the matter to CBCID or to any other investigating agency. In the year 2004, several bogus cases were closed, but, not this case. The investigation report was prepared after the expiry of 5 years from the date of accident, ie. on 10.06.2009.



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14. It is seen that the FIR was registered, after a lapse of 14 days from the date of accident. The reasons stated in the petition is that mediation talks were going on. It is seen that the driver of the vehicle has admitted his guilt and he has paid fine before the Criminal Court. So far, no complaint was lodged against the claimants, regarding a bogus case.

15. A copy of the FIR was marked as Ex.P1. Copy of the Judgment of the Criminal Court was marked as Ex.P6. Driving licence was marked as Ex.P7. Investigation report was marked as Ex.R1. LIC policy for the TVS Champ vehicle was marked as Ex.R2. Ex.P1, P6, P7, Ex.R1 and Ex.X1 are the documents regarding the liability. Ex.R1 - enquiry was conducted after a lapse of 5 years. Hence, it is decided that Ex.R1 is not reliable. From the evidence of P.W.1 and P.W.2 and from Ex.P1, P3, P6, P7 and Ex.R1, it is decided that the rider of the Yamaha motorcycle was rash and negligent and he was responsible for the accident.

MCOPNo.387 of 2005 (CMA(MD)No.235 of 2012)

16. The rider of the two wheeler, by name, Sridhar, sustained injuries on the right leg and his 2nd and 3rd toes were affected and the second toe was amputated. The claimant has pleaded that he sustained injury in the accident and the discharge summary was marked as Ex.P2. Medical bill was marked as Ex.P5. Disability



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certificate was marked as Ex.P9. X-Ray was marked as Ex.P10. P.W.3 has deposed that the claimant sustained injuries and the second toe of the right leg was amputated, he was admitted in Trichy Government Hospital from 27.07.2004 till 30.07.2004 as inpatient. Accident Register copy was marked as Ex.P3. P.W.3 has deposed that the petitioner sustained fracture on the right shoulder and he fixed the disability at 38%. Since P.W.3 was not the Doctor, who gave treatment, the Tribunal has fixed the disability at 33%, which is reasonable. .

17. On the side of the appellant, it is stated that the Tribunal has fixed the monthly income at Rs.5,000/- per month and applied multiplier method and fixed the loss of income at Rs.1,90,080/-. Without a proof of functional disability, the tribunal is wrong in applying multiplier method for 33% of disability,. The claimant is entitled to Rs.3,000/- per percentage of the disability and hence, it is decided that the claimant is entitled for a sum of Rs.99,000/- (Rs.3,000/- X 33 =Rs.99,000/-). The tribunal has awarded Rs.15,000/- towards pain and suffering, Rs.4,000/- towards extra nourishment, Rs.3,000/- towards transport expenses, Rs.5,000/- towards medical expenses, which are all reasonable. For temporary loss of income for the period of treatment and for the period of rehabilitation, the petitioner is entitled to Rs.40,000/-. The total compensation is fixed at **Rs.1,66,000/-**.



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MCOP.No.797 of 2004 (CMA(MD)No.236 of 2012):

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18. The petitioner in MCOP.No.797 of 2004 sustained injuries in the accident and the wound certificate was marked as Ex.P8. Disability certificate was marked as Ex.P11. X-Ray was marked as Ex.P12. P.W.3 has deposed that the petitioner sustained fracture on the right leg and he fixed the disability at 36%. P.W. 3 did not give any treatment to the petitioner and hence, the Tribunal has fixed the disability at 31%, which is reasonable. For 31% of disability, without any proof for functional disability, the tribunal has wrongly applied the multiplier method, which is not proper. The petitioner is entitled to Rs.93,000/- (Rs.3,000/- X 31 = Rs.93,000/-) as compensation for the disability.

19. For the period of treatment and for the period of rehabilitation, the petitioner is entitled to Rs.30,000/- towards temporary loss of income. The Tribunal has awarded Rs.15,000/- towards pain and suffering, Rs.4,000/- for extra nourishment, Rs.3,000/- towards transport expenses, which are all reasonable. In total, the petitioner is entitled to **Rs.1,45,000/-** as compensation.

20. CMA(MD)No.235 of 2012 is partly allowed. The quantum of compensation awarded by the Tribunal is reduced from Rs.2,17,080/- to Rs.1,66,000/-.



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(i) The claimant / Sridhar is entitled to Rs.1,66,000/- as compensation.

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(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of **Rs.1,66,000/-** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, 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 first respondent herein / claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him.

21. CMA(MD)No.236 of 2012 is partly allowed. The quantum of compensation awarded by the Tribunal is reduced from Rs.2,00,560/- to Rs.1,45,000/-.

(i) The claimant / Babu is entitled to **Rs.1,45,000/-** as compensation.

(ii) The appellant -Insurance Company, is directed to deposit the entire compensation of Rs.1,45,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made by the Insurance Company, the first respondent herein / claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. **Excess amount, if any, shall be refunded to the appellant / Insurance Company in both the appeals.**

22. In the result, these appeals are partly allowed. No costs.

06.09.2022

Index : Yes/No

Internet : Yes/No

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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

1.The Motor Accident Claims Tribunal –

I Additional Subordinate Judge,

Tiruchirappalli.

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.



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R. THARANI, J.

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Pre-delivery Judgments made in
C.M.A.(MD)Nos.235 and 236 of 2012

06.09.2022