



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA(MD)No.636 of 2019

and

CMP(MD)Nos.7844 of 2019 and 2801 of 2020

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The Branch Manager,
HDFC ERGO General Insurance Company Ltd.,
No.111, Achutha,
Bharathidasan Salai,
Contonment,
Trichy-620 001.

... Appellant/Respondent No.2

1.Samikannu

Vs.

... Respondent/Petitioner

2.Palanichamy

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order dated 23.01.2019 passed in M.C.O.P.No.17 of 2016 on the file of the Motor Accident claims Tribunal(Principal Sub Court), Pudukkottai and allow this appeal.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : Mr.S.Mohammed Kasim for R1
Mr.P.Jeyasankar for R2

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the HDFC ERGO General Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 17 of 2016, on the file of the learned Motor Accident claims Tribunal (Principal Sub Court), Pudukkottai. They have filed the present appeal questioning the liability as well as the quantum of compensation awarded by the Tribunal.

2.According to the learned counsel for the appellant/Insurance Company, the two wheeler driven by the injured dashed on head on collision with the tractor of the offending vehicle, having registration No.TN-55-AE-8970. The driver of the two wheeler namely, the injured has also contributed to the accident and he is not having any proper driving licence. The driver of the tractor is also not having driving licence and hence, fastening the complete liability upon the insurer of the tractor is unsustainable in law



and also made a submission on the quantum of compensation that 40% functional disability has to be taken as 25% and accordingly, the multiplier method has also to be adopted.

3. Heard both sides and perused the materials available on record.

4. After perusing the evidence of RW1-Motor Vehicle Inspector coupled with the evidence of Ex.R2-Motor Vehicle Inspector's report for the Tractor and Ex.R4-Motor Vehicle Inspector's report for the Two wheeler, in the absence of any damage in front of the two wheeler, the Tribunal has rightly fixed the entire negligence on the driver of the Tractor. On appreciation of the oral and documentary evidence of RW1 coupled with Ex.R2, Ex.R3 and Ex.R4 documentary evidence, I find that such a finding rendered by the Tribunal is just and proper and the same does not warrant any interference in the appellate stage. Accordingly, this Court holds that the accident had taken place only due to the rash and negligent driving of the driver of the first respondent tractor.

5. From the evidence of RW1 and RW2 and Ex.R2, the Motor Vehicle Inspector's report on the tractor, I find that the driver of the Tractor does not have any valid driving licence on the date of the accident and the same is in violation of the condition of Ex.R1-Insurance Policy. Hence, the insurance company cannot be fastened with the liability, if at all following the judicial pronouncement, the insurance company is directed to pay and recover the same from the owner.

6. On the quantum of compensation, based upon Ex.C1-Disability Certificate issued by the Medical Board of the Pudukkottai Government Hospital, 40% disability has been fixed. However, the tribunal has taken 40% as functional disability. In view of the decision of the Hon'ble Supreme Court in **Raj Kumar Vs Ajay Kumar** reported in **2011 ACJ 1(SC)**, unless it is being demonstrated by PW1 as to how the injury has resulted in functional disability, in the absence of any positive evidence, the percentage of the disability fixed by the medical board cannot be decided as that of the functional disability. Taking note of the disability mentioned in the certificate, I find that the functional disability be, safely, fixed at 25% instead of 40%. Accordingly, the quantum of compensation is reduced from Rs.5,750 X 12 X 16 X 40/100 =Rs.4,41,600/- to Rs.5750 x 12 x 16 x 25/100=Rs.2,76,000/-. The Tribunal has rightly adopted the multiplier method as per the decision in **Sarla Verma and others vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** and the same need not be disturbed. The notional income fixed by the Tribunal appears to be reasonable and also the award passed by the Tribunal under the other heads are found to be reasonable and therefore, the same is hereby confirmed.



7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is reduced from Rs.5,12,740/- to Rs.3,47,140/- which shall carry interest at the rate of 7.5% per annum. The present appellant/Insurance Company is directed to deposit the entire compensation amount awarded by this Court, i.e., Rs.3,47,140/- (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 to the credit of MCOP.No.17 of 2016 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Pudukkottai, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant is permitted to withdraw the same, in the manner known to law. If, the appellant/Insurance Company had already deposited the compensation awarded by the Tribunal to the credit of the said MCOP, then, they are at liberty to withdraw the balance amount which is in excess of the amount awarded by this Court after following due process of law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

cp

To

The Principal Sub Judge,
The Motor Accidents Claims Tribunal, Pudukkottai.

COPY TO:-

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

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate (SR-9622[F]
dated 02/03/2022)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-9388[F]
dated 01/03/2022)

CMA(MD)No.636 of 2019

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