



C.M.A. No. 1266 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1266 of 2021 and

C.M.P.No.6471 of 2021 and

C.M.P.No.25548 of 2023

The National India Insurance Company Limited,
Kumaran Illam,
Green Field,
Uthagamandalam,
Nilgiris - 643 001.

... Appellant / 3rd Respondent

Vs.

- | | | |
|----|-------------------|---------------------------------|
| 1. | S. Palani Gounder | ... Respondent / Petitioner |
| 2. | P. Mohanraj | ... Respondent / 1st Respondent |
| 3. | A. Sivakumar | ... Respondent / 2nd Respondent |

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 26.02.2019 passed in M.A.C.T.O.P. No. 1667 of 2015 on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Coimbatore.

For Appellant	:	M/s. N. B. Sureka
For R1	:	Mr. S. Arjun
For R2 and R3	:	No Appearance



JUDGMENT

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This Civil Miscellaneous appeal has been filed by the insurance company challenging the quantum of compensation awarded in M.A.C.T.O.P. No. 1667 of 2015, dated 26.02.2019 on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Coimbatore.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The case of the claimant is that on 07.04.2015, at about 11:45AM, he was riding a motor cycle bearing Registration No. TN-40-B-0286 on the Annur to Mettupalayam road and while he reached near Village Administrative Office at Pogalur, a rider of a motor cycle bearing Registration No. TN-78-2440 came in the opposite direction in high speed and negligent manner, hit on the two wheeler of the claimant, which resulted in causing severe injuries to the claimant. A criminal case was also registered against the first respondent, rider of the two wheeler bearing Registration No. TN-78-2440 in Cr.No.295/15 on the file T1W(W) Police station, Coimbatore. The claimant was aged about 74 years at the time of



accident and was a farmer and doing milk vending business and earning a monthly income of Rs.20,000/-. Hence, after taking treatment, the claimant has come forward with a claim petition seeking compensation for a sum of Rs.7,00,000/- under section 166(1)(a) of M.V. Act 1988.

4. The first respondent is the rider and the second respondent is the owner of the motor cycle bearing Registration No.TN-78-2440 has not contested the claim and remained ex-parte. The third respondent - insurance company, who is the insurer of the second respondent motor cycle has filed a counter and contested the claim by stating that the first respondent was not having a valid driving licence at the time of accident and also contended that the claimant himself is a tortfeasor, since, he rode the motor cycle negligently and caused the accident. The insurance company has also disputed the income, occupation and disability sustained by the claimant and the compensation claimed under various heads is also on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, the claimant himself examined as P.W.1 and Exs.P.1 to P.12 were marked through him. On the side of the



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respondent - insurance company, the Insurance Official namely Tmt. Sujatha was examined as R.W.1 and Ex.R.1- insurance policy was marked. The disability certificate issued by the Medical Board is also marked as Ex.C.1.

6. Based on the evidence placed on record, the Tribunal in point Nos.1 and 2, has held that the rider of the motor cycle bearing Registration No.TN-78-2440 is responsible for the accident and he is the tortfeasor and there is no violation of policy condition, hence the respondents are liable to pay the compensation to the claimant herein. In point No.3, the Tribunal has quantified and granted a compensation for a sum of Rs.17,08,985/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the quantum of compensation awarded by the Tribunal, the insurance company has filed this appeal on the ground that the compensation awarded by the Tribunal is exorbitant.

8. The learned counsel appearing for the insurance company has mainly contended that there is a clear admission on the part of the claimant



that he was not possessing a valid driving licence to drive the motor cycle and also was not wearing helmet, at the time of accident. The learned counsel also further submits that the injuries sustained by the claimant mainly in the head and surrounding areas, which resulted in causing injuries to his eyes also. If he had wore helmet at the time of occurrence, he could not have sustained injuries in this nature. It is also contended by the Insurance company that the quantum of compensation granted under various heads are on the higher side and also exorbitant, hence prays to modify and award just compensation.

9. Per contra, the learned counsel appearing for the claimant has submitted that the claimant was aged about 74 years at the time of accident and it has been categorically found by the Tribunal that the claimant is not responsible for the accident and there is no negligence on the part of the claimant and the same shall not be fixed on the claimant on the ground that the claimant was not wearing a helmet and not possessing a valid driving licence at the time of accident, hence prays to confirm the award of the Tribunal.



10. Heard submissions made on both sides and perused the materials placed on record:

11. In this case, the claimant has subjected himself before the Medical Board for assessing his disability and the same was marked as Ex.C.1 before the Tribunal, it shows that the Medical Board has made an unanimous opinion that the claimant has sustained grievous head injuries and his both eyes were treated conservatively and after assessing, the Medical Board fixed the disability of the claimant as 100% and the same was accepted by the Tribunal.

12. On perusal of Ex.P.6- discharge summary, it shows that the claimant has sustained following injuries: Type III B open fracture right leg with facila injury, closed fracture of right 3rd, 4th, 5th metacarpals, Head injury - Left occipital haematoma, acute occipital haematoma with cortical blindness - Both eyes, Pan facial fractures, Hypertension. The Medical Board has noted all the above injuries and based on the fact that the claimant has lost his eye sight, fixed the disability as 100%.



13. The claimant- P.W.1 has deposed that he is not able to continue his regular work and he is totally dependent on others to do any work to make out of his livelihood. It is also the case of the claimant that he is an agriculturist and also used to carry out milk vending business and due to loss of his eye sight, he could not able to carry out his earlier avocation.

14. In view of the above, this Court accepts the disability assessed by the Medical Board and the disability adopted by the Tribunal is in order and this Court is not inclined to modify the same.

15. With regard to the contention raised by the learned counsel appearing for the insurance company with respect to negligence on the part of the claimant of not possessing a valid driving licence and not wearing a helmet at the time of accident, the evidence of P.W.1, the claimant shows that he was aged about 74 years and not having a valid driving licence to drive the two wheeler and similarly, he was not wearing helmet at the time of accident. The Division Bench of this Court in ***C.M.A.(MD). No. 987 and 988 of 2014 dated 13.02.2017, Branch Manager (Oriental Insurance Company Limited) vs. Indirani and others*** has held as follows:



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11. *Without wearing a helmet, no rider can drive the two wheeler and as per Section 129 of the Motor Vehicles Act, 1988, it is mandatory. Section 129 of the Motor Vehicles Act, 1988, is usefully extracted hereunder:*

"129. Wearing of protective headgear.- Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear [protective headgear conforming to the standards of Bureau of Indian Standards]:

Provide that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

Explantion.- "Protective headgear" means a helmet which,-

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the even of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

16. In paragraph 12, it is held that not wearing helmet would attract 15% of contributory negligence. As held by the Division Bench of this Court that not wearing helmet at the time of accident, shall be treated as



contributory negligence to the extent of 15% against the rider of the two wheeler. In this case, the claimant, who is aged about 74 years, who is a senior citizen, hence, it is expected that he has to safeguard himself or not indulge in any negligent act or risk his life in riding a two wheeler that too not possessing a valid driving licence and without wearing a helmet in a busy road is not permissible. Since he was not wearing the helmet, he sustained severe head injuries, which lead to loss of eye sight. Hence, this Court of the view that the contention of the insurance company that the claimant also contributed to the negligence for not possessing of a valid driving licence to ride the two wheeler and not wearing a helmet at the time of accident is acceptable. Accordingly, overall contributory negligence on the part of the claimant is fixed as 20%.

17. With regard to the quantum of compensation awarded by the Tribunal under various heads are concerned, the learned counsel for the insurance company has submitted that Rs.1,00,000/- has been awarded under each heads loss of amenities and attender charges and Rs.5,00,000/- under the head pain and suffering, which is exorbitant and prays to modify the same.



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18. Whereas, the learned counsel appearing for the claimant has submitted that since, the claimant has lost his eye sight, he could not do any of his regular work and also he requires assistant for his whole life in order to carry out his day to day activities, hence, the Tribunal has taken note of the same and awarded compensation. This Court in ***S. Govindraj vs. the Managing Director, Tamil Nadu State Transport Corporation (Vpm) Ltd., [2017 (2) TN MAC 108]***, has awarded Rs.5,00,000/- under the head Attendant Charges, since the injury sustained by the claimant therein was loss of both limbs, hence, prays to modify the award of compensation under attender charges.

19. The claimant has lost his eye sight completely, so, he also requires assistant for his remaining life. Hence, this Court is of the view that the award of Rs.1,00,000/- under the head attender charges is modified to Rs.3,00,000/-, whereas the other heads are concerned, the Tribunal has awarded just compensation, hence, this Court is inclined to confirm the same. In point no.3 – the Tribunal has held that the first respondent was not having valid driving license and adopted the principle of pay and recovery.



Since no challenge is made by both sides, the same is hereby, confirmed.

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20. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Future loss of earning power	6,00,000/-	6,00,000/-	Confirmed
2.	Medical Expenses	3,83,985/-	3,83,985/-	Confirmed
3.	Pain and Suffering	5,00,000/-	5,00,000/-	Confirmed
4.	Loss of amenities	1,00,000/-	1,00,000/-	Confirmed
5.	Attendant charges	1,00,000/-	3,00,000/-	Enhanced
6.	Transportation to Hospital	10,000/-	10,000/-	Confirmed
7.	Extra Nourishment	10,000/-	10,000/-	Confirmed
8.	Damage to Clothing	5,000/-	5,000/-	Confirmed
	Total	17,08,985/-	19,08,985/-	Enhanced
	Less: 20% Contributory Negligence	---	3,81,797/-	
	Compensation Awarded	17,08,985/-	15,27,188/-	Reduced

21. The Insurance Company has filed a petition to mark additional documents, to prove the Motor Vehicle Inspector Report. This Court is of the view that, there is no proper explanation given for not marking the above



document before the Tribunal. It is stated by the learned counsel appearing for the insurance company that the document to be marked is to prove the fact that the claimant was not having a valid driving licence at the time of accident. Whereas, it is admitted fact that in the evidence of P.W.1, the claimant was not having a valid driving licence to ride the two wheeler at the time of accident. Hence, this Court is of the view that marking of additional documents for the above reason at this stage is not necessary, hence, the civil miscellaneous petition is dismissed.

22. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,08,985/- is hereby reduced to **Rs.15,27,188/- [Rupees Fifteen Lakhs Twenty Seven Thousand One Hundred and Eighty Eight only]** together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period. if any. The appellant -Insurance Company is directed to deposit the amount awarded 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.1667 of 2015 on the file of the Special



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Subordinate Judge, Motor Accidents Claims Tribunal, Coimbatore and recover the same from the second respondent, owner of the offending two wheeler, as per the award of the Tribunal. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant without any formal application. Consequently, the connected miscellaneous petitions stands closed. There shall be no order as to costs in the present appeal.

15.11.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Coimbatore.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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