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C.M.A. No.442 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.442 of 2023
and CMP No.13427 of 2023

Baskaran

...

Appellant

Vs.

1.R.Natarajan

2.The Branch Manager

The United Insurance Company Ltd.,

No.2, Church Street,

Karaikal.

...

Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the order dated 15.12.2022 made in MCOP No.191 of 2017 on the file of the Presiding Officer, Motor Accident Claims Tribunal, Subordinate Court, Karaikal.

For Appellants : Mr.L.Ramanathan for
Mr.T.Ananthasekar

For Respondents : Mr.D.Bhaskaran for R2
R1 - Exparte



C.M.A. No.442 of 2023

WEB COPY

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the dismissal order dated 15.12.2022 made in MCOP No.191 of 2017 on the file of the Presiding Officer, Motor Accident Claims Tribunal, Subordinate Court, Karaikal.

2. The appellant has filed the above said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.04.2017.

3. The 1st respondent remained exparte before the Tribunal.

4. The 2nd respondent filed a counter statement denying the averments made in the claim petition stating that the 1st respondent was not holding valid driving licence at the time of accident; that there was no proper insurance coverage for the alleged vehicle at the time of accident; that there is no nexus between the alleged burning and damaging of the car and the



C.M.A. No.442 of 2023

injuries said to have been sustained by the appellant; that in any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellant examined himself as PW1 and marked Exs.P1 to P17 on his side. On the side of the 2nd respondent, RW1 was examined and Exs.X1 & X2 were marked. Disability Certificate issued by the Medical Board, Govt. General Hospital, Karaikal was marked as C1.

6. The Tribunal, considering the oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the first respondent however dismissed the claim petition holding that the appellant has failed to prove the injuries sustained in the road traffic accident and that as a Government servant, he is eligible to reimburse the medical expenses from the Government. Aggrieved against the said award, the appellant has preferred the instant appeal.



C.M.A. No.442 of 2023

7. The learned counsel appearing for the appellant submitted that though the appellant had established that he sustained injuries in the road accident and the Medical Board had assessed the disability as 46%, the Tribunal had erroneously dismissed the claim petition on the ground that the appellant is eligible to get reimbursement from the Government. The learned counsel further submitted that the finding of the Tribunal is based on an erroneous appreciation of the object and scope of the Motor Vehicles Act and prayed for allowing the appeal by awarding compensation.

8. The first respondent remained exparte before the Tribunal and the learned counsel sought permission of this court to dispense with notice to the first respondent and made an endorsement to that effect. Hence, notice to the first respondent is dispensed with.

9. The learned counsel appearing for the second respondent, per contra submitted that the first respondent had a valid insurance policy with the second respondent; that however the Tribunal found that the first respondent



C.M.A. No.442 of 2023

did not possess a valid driving licence and therefore observed that if any compensation is awarded, the second respondent can pay the same at the first instance and recover the same from the first respondent; that the said finding of the Tribunal is not erroneous and prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant as well as the second respondent and perused the materials available on record.

11. The only question involved in the instant appeal is whether the Tribunal was right in dismissing the claim petition.

12. It is seen from the award of the Tribunal that on the basis of the oral and documentary evidence, it has held that the accident occurred due to the rash and negligent driving by the first respondent and the appellant sustained injuries due to the said accident. There is no dispute with regard to the said fact. However, the first respondent did not possess valid driving licence at the time of accident but he had a valid insurance policy with the



C.M.A. No.442 of 2023

second respondent. Therefore, this court is of the view that the second respondent is liable to pay the compensation to the appellant at the first instance and recover the same from the first respondent, for violation of policy condition.

13. As far as quantum of compensation is concerned, it is seen that the appellant was examined by the Medical Board and Ex.C1/disability certificate was issued stating that appellant sustained 46% disability observing “segmental # © tibia c Valgue Fuee”. It is also not in dispute that the appellant had produced medical bills, Ex.P11 series to the tune of Rs.36,884/- and transport bills, Ex.P14 to the tune of Rs.4400/-. However, the Tribunal had dismissed the claim petition on the ground that since the appellant was a State Government Employee, he had not suffered any loss of income. This Court is of the view that such an approach of the Tribunal is on erroneous appreciation of the Motor Vehicles Act. The appellant is entitled to compensation for the injuries suffered by him in the accident.



C.M.A. No.442 of 2023

14. The appellant has now filed a petition under Order 41 Rule 27 of CPC r/w Section 151 of CPC to receive the original document of Ex.P6 instead of xerox copy of same marked as Ex.P6 (discharge summary) before the Tribunal. Being satisfied with the reasons given in the affidavit filed in support of the petition, C.M.P.No.13427 of 2023 is allowed and the said original document is marked as Ex.P6.

15. The appellant had not established that he suffered functional disability and hence he is entitled to compensation by adopting percentage method. The accident is of the year 2017 and the appellant is entitled to Rs.5,000/- per percentage of disability. Thus, a sum of Rs.2,30,000/- (Rs.5000 x 46) is awarded towards partial disability. He has also incurred medical expenses to the tune of Rs.36,884/- which has been established through Ex.P11 medical receipts and Rs.989/-, Ex.P13. Hence, a sum of Rs.37,873/- is awarded towards medical expenses. The appellant had also produced transport bills to the tune of Rs.4,400/- and he is entitled to a sum of Rs.4400/- towards transport expenses. Considering the nature of injuries,



C.M.A. No.442 of 2023

period of treatment and the year of accident, this court awards a sum of Rs.10,000/- towards extra nourishment, Rs.5,000/- towards attender charges, Rs.20,000/- towards pain & sufferings and Rs.20,000/- towards loss of amenities. Thus, the appellant is entitled to compensation under the following heads.

S. No	Description	Amount awarded by this Court (Rs)
1.	Partial disability	2,30,000/-
2.	Medical expenses	37,873/-
3.	Transport expenses	4,400/-
4.	Extra nourishment	10,000/-
5.	Attender charges	5,000/-
6.	Pain and Sufferings	20,000/-
7.	Loss of amenities	20,000/-
	Total	3,27,273/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.3,27,273/- is awarded as compensation to the appellant together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent / Insurance



C.M.A. No.442 of 2023

company is directed to deposit the award amount, now determined by this Court along with interest and costs, within a period of six (6) weeks from the date of a receipt of copy of this Judgment, at the first instance and recover the same from the first respondent, owner of the vehicle. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs. The appellant is directed to pay the necessary Court Fee, if any, on the award amount. No costs.

01.09.2023

rgr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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C.M.A. No.442 of 2023

SUNDER MOHAN, J.

rgr

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Karaikal..

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

C.M.A. No.442 of 2023

Dated: 01.09.2023

10/10