IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.42 of 2018
and
C.M.P.No.466 of 2018

Messers Royal Sundaram Alliance General Insurance Co.Ltd.,
Mangalam Buildings, Near 4 Road,
Omalur Main Road, Salem – 7. ... Appellant

Vs.

1.Mahendiran
2.Veerasamy ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in M.A.C.T.O.P.No.196 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2) at Salem dated 03.10.2017.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : No appearance for R1
R2 – given up

JUDGMENT

This appeal has been filed by the Insurance Company as against the award dated 03.10.2017 passed in M.A.C.T.O.P.No.196 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2) Salem.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The brief facts of the case are as follows:

On 28.01.2014, the petitioner/injured claimant was riding a motor cycle bearing Registration No.TN-30-AR-6350 on Attur to Salem N.H.Road. When the claimant was proceeding near Priyakrishnapuram bridge, a TATA ACE bearing Registration No.TN-31-AL-5704, which is owned by the first respondent and insured with the second respondent came from the same direction, driven by the driver behind the two wheeler in a rash and negligent manner and suddenly without making signal, turned the vehicle to his left side, resulting which, he had lost his control and hit against the claimant's vehicle. Due to the said impact, the claimant sustained grievous injuries. The claimant took first aid treatment in Manipal Hospital, Salem, and then he was admitted in the Ganga Hospital, Coimbatore for further treatment. Hence, he claimed a sum of Rs.25,00,000/- as compensation.

4. The first respondent, who is the owner of the offending vehicle given-up before the Tribunal.

5. The said claim was resisted by the Insurance Company by filing a counter statement denying the age, occupation and monthly income of the deceased. They also denied the manner of the accident as stated by the claimant in the claim petition. Thus, they sought for dismissal of the claim petition.

6. To substantiate the case on the side of the claimant, the claimant examined himself as P.W.1 and marked documents Ex.P1 to Ex.P10. On the side of the second respondent/Insurance Company, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R5 were marked. The Court document was marked as Ex.C1.

7. The Tribunal, after considering the oral and documentary evidence available on record, had come to the conclusion that the accident is the result of the rash and negligent driving of the driver of the TATA ACE bearing Registration No.TN-31-AL-5704 belonging to the first respondent therein. By coming to such conclusion, the Tribunal awarded a total compensation of Rs.18,37,005/- with interest at 7.5% per annum from the date of claim petition till the date of realisation and directed the second respondent/Insurance Company to pay the compensation to the claimant at first instance and thereafter, recover the same from the owner of the offending vehicle. Challenging the award passed by the Tribunal, the Insurance Company has filed the present Civil Miscellaneous Appeal.

8. The learned counsel for the appellant/Insurance Company has submitted that as the injured/claimant had ride the motor cycle in a rash and negligent manner with uncontrolled speed and dashed on the rear side of the TATA ACE, he was solely responsible for the accident**.** The injured/ claimant did not wear helmet at the time of the accident and also did not leave sufficient space between the vehicle while proceeding in Highways. In such circumstances, certain percentage of negligence or equal liability

ought to have been fixed on the part of injured /claimant, instead of doing so, the Tribunal fixed entire liability on the part of the driver of the TATA ACE goods vehicle and passed an award in favour of the claimant.

9. As far as quantum of compensation is concerned, it is the contention of the learned counsel for the appellant that the claimant was aged about 27 years at the time of accident and working as a driver. However, the Tribunal without following the decision of the Supreme Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680]*** wrongly applying multiplier 18 and adding 50% towards future prospects awarded a sum of Rs.18,37,005/- as compensation.

10. Heard the learned counsel for the appellant and perused the records. Despite service of notice, the first respondent has not chosen to enter appearance either through a counsel or in person.

11. The accident is admitted. The offending vehicle which was involved in the accident is also admitted. The offending vehicle was insured

with the appellant/Insurance Company is also not in dispute. The only dispute now raised before this Court is regarding fixing entire liability on the Insurance Company and the quantum of compensation awarded by the Tribunal.

12. This Court, as an appellate Court, and also being a fact-finding Court, had analysed the issue independently and re-appreciates the evidence to arrive an independent finding.

13. This Court, as a final Court of fact finding re-appreciated the entire evidence and finds that the accident had happened only due to the rash and negligent driving of the driver of the offending vehicle. As the insurer of the said vehicle, the appellant/Insurance Company is liable to indemnify the owner of the vehicle to pay compensation to the claimant. As far as quantum of compensation is concerned, the injuries sustained by the claimant was not disputed and his disability was fixed at 45%.

14. It is the contention of the learned counsel for the appellant that the disability of the claimant was assessed at 45%, which is on the

higher side and the same may be reduced. In the case on hand, Ex.C1/disability certificate issued by the medical board clearly shows that the claimant sustained injury in his leg and he could not retrieve from the said injury. During trial, P.W.1/injured claimant clearly stated that even after best treatment, he could not retrieve from the injury. The claimant was a driver by profession and he may not be able to drive, since one of his leg is totally damaged. Considering the above facts, this Court is of the view that the Tribunal has rightly fixed permanent functional disability of the claimant at 45%. Therefore, this Court does not find any infirmity in fixing disability at 45%.

15. The main contention raised by the learned counsel for the appellant is that only due to rash and negligent driving of the driver of the motor cycle, the accident had happened and therefore, the claimant also contributes to the accident.

16. As far as the manner of the accident is concerned, in the counter, it is stated that at the time of accident, the driver of the offending

vehicle (TATA ACE Goods Vehicle), while turning left side, put indicator, but the claimant, who rode the two wheeler behind the TATA ACE Goods Vehicle in an uncontrolled speed dashed on the rear side of the offending vehicle and sustained injuries. However, during trial, the driver of the offending vehicle, who was examined as R.W.1 stated that the claimant, who rode the motor cycle in a rash and negligent manner dashed on the left side of the offending vehicle. Therefore, the Tribunal finds that the evidence R.W.1 is contrary to the counter of the Insurance Company. In this case, the claimant is the injured and he is also the eye witness and he has clearly stated the manner of the accident. However, the respondents have not proved that the rider of the motor cycle is also contributes to the accident. Therefore, the Tribunal finds that the claimant has proved the foundational facts that the accident had happened only due to the rash and negligent driving of the driver of the offending vehicle, which was insured with the appellant and the appellant as an insurer of the offending vehicle, is liable to pay compensation.

17. The claimant was aged about 27 years, at the time of

accident and working as a driver. Considering the occupation of the claimant and the year of the accident, the Tribunal rightly fixed Rs.7,000/- as notional monthly income of the claimant and as per the decision of the Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680]*** 40% of the same is added towards future prospects and multiplier '17' is applied. Thus, the "Loss of Earning Capacity" is re-calculated as follows :

Monthly income	:	Rs. 7,000/-
Add Future prospects 40% of Rs.7,000	:	Rs. 2,800/-
		....
	:	Rs. 9,800/-
Annul Income (9,800x12)	:	Rs. 1,17,600/-
Multiplier "17" (1,17,600x17)	:	Rs.19,99,200/-
45 % Functional disability (19,99,200 x 45%)	:	Rs.8,99,640/-

18. Thus, the sum of Rs.10,20,600/- awarded by the Tribunal under the head of "Loss of Earning Capacity" is hereby reduced to Rs.8,99,640/-.

19. Further, the sum of Rs.75,000/- awarded by the Tribunal under the head “Pain and Suffering”, appears to be on the higher side and hence, the same is hereby reduced to Rs.50,000/-.

20. Further, the sum of Rs.75,000/- awarded by the Tribunal under the head " Loss of Amenities" appears to be not necessary and hence, the same is hereby set aside.

21. The amounts awarded by the Tribunal under all the other heads are fair and reasonable and hence, they are confirmed.

22. Thus, the total compensation payable to the first respondent /claimant is re-calculated and tabulated below:

S.No.	***Heads under which amount is awarded by the Tribunal***	***Amount awarded by the Tribunal in Rs.***	***Amount awarded by this Court in Rs.***
1.	Loss of Earning Capacity	10,20,600	8,99,640
2.	Pain and Sufferings	75,000	50,000
3.	Loss of Amenities	75,000	-
4.	Medical Expenses	5,90,905	5,90,905
5.	Transportation	25,000	25,000
6.	Extra Nourishment	25,000	25,000
7.	Attender Charges	25,000	25,000
8.	Damages to Clothes	500	500
	Total	**18,37,005**	**16,16,045**

23. Accordingly, this Court hereby awards a sum of Rs.**16,16,045**/- to the claimant as compensation.

24. The total compensation of Rs.**18,37,005**/- awarded by the Tribunal is hereby reduced to Rs.**16,16,045**/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The appellant/Insurance Company is directed to deposit the above entire modified award amount to the credit of M.A.C.T.O.P.No.196 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2), Salem accrued interest and costs awarded by the Tribunal, from the date of claim petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs. Thereafter, the appellant/Insurance Company shall recover the same from the owner of the vehicle-the second respondent herein.

25. With the above observations and directions, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.08.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Motor Accidents Claims Tribunal
(Special Sub Court No.2)
Salem.

2.The Section Officer,
V.R.Section,
High Court, Madras.

P.VELMURUGAN, J.

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C.M.A.No.42 of 2018

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