



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3324 of 2014

and

M.P.Nos.1 and 2 of 2014

Bharathi AXA General Insurance Co. Ltd.,
rep., by Branch Manager,
Pride Quadra, No.80, 2nd Floor,
Happal Road,
Bangalore

... Appellant

Vs

1. C.Ravikiran

2. R.Avinash

3. Rajasekar

4. Royal Sundaram Alliance Insurance Co., Ltd.,
Rep., by its Manager,
Sundaram Towers, Whites Road,
Royapettai, Chennai-14.

... Respondents

Prayer: This Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 10.07.2014 made in MCOP No.215 of 2011 on the file of the Motor Accidents Claims Tribunal Sub Court, Hosur.



For Appellant : M/s.S.Arun Kumar

For Respondents : M/s.Mukund R.Parehan for R1

JUDGMENT

This Civil Miscellaneous Appeal is filed by the insurance company challenging the liability and quantum of compensation awarded in MCOP.No.215 of 2011 dated 10.07.2014 on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur.

2. The parties are referred to hereunder according to the status and ranking before the Tribunal.

3. On 23.01.2011 while the claimant was returning from Denkanikotta in the car bearing Registration No.Ka-03-MD-7331 belonging to the third respondent, insured with the fourth respondent, at about 11.15 P.M when the claimant was 200 feet away from Nagondapalli Eri Karai in Hosur to Denkanikotta road, a Innova car bearing Registration No.KA-50-M-4437 was driven by the 1st respondent in a rash and negligent manner, came in the opposite direction, had lost the control and dashed against the



claimant's car. Due to the accident, the claimant has sustained injuries and taken to Government Hospital, Hosur. After the first aid, claimant was taken to SPARSH hospital, Bangalore and admitted as inpatient on 23.01.2011. A criminal case was registered in the Hosur TIW Police Station against the claimant in Crime No.18 of 2011 under Section 279, 337 of IPC. The claimant has filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident under Section 166 of Motor Vehicles Act.

4. Learned counsel for the first respondent has filed the counter and contended that the accident had taken place only due the rash and negligent driving of the claimant. It is further contended that at the time of accident, the first respondent possess a valid driving license and he has followed the traffic rules correctly and drove the vehicle in slow and careful manner. Hence, the first respondent is not liable to pay the compensation.

5. The Second respondent has filed the counter and contended that the driver of the Innova car bearing Registration No.KA-50-M-4437 the vehicle by observing all the traffic rules and regulations and at the time of accident,



car bearing Registration No.KA-03-MD-7331 belonging to the third respondent was driven by the claimant in the opposite direction and dashed against the KA-50-M-4437 and caused the accident. The claimant had no valid driving license and only due to the negligent driving of claimant the accident had taken place. The police conducted the investigation and filed charge sheet only against the claimant. Hence the respondent is not liable to pay any compensation to the claimant.

6. Fourth respondent has filed counter stating that the claimant was driving the car in a slow and observing all the traffic rules from Nagondapalli Eri Karai in Hosur to Denkanikotta, at that time, driver of the first respondent driven his car in a high speed in a rash and negligent manner caused accident. Hence, first and second respondents are liable to pay the compensation.

7. Based on the evidence placed on record, the Tribunal in Point No.1 has held that first respondent is responsible for the accident. In Point No.2, the Tribunal has quantified the compensation and awarded a sum of Rs.3,58,500/- as compensation and directed the second respondent to pay



the compensation. Aggrieved over the quantum of compensation and liability fixed on the second respondent, the Insurance company has preferred this Civil Miscellaneous Appeal.

8. It is contended by the learned counsel for the insurance company that FIR for the accident was registered only against the injured in this case and the same was not taken into consideration by the Tribunal. It is further contended that liability fixed on the driver of the first respondent vehicle is not proper and the same shall be fixed on the claimant. It is further submitted that the quantum of compensation awarded under various heads are on higher side and the reimbursement of the medical bills have not been properly considered by the Tribunal and prays to dismiss the claim petition.

9. Per contra, the learned counsel for the claimant has submitted that based on the evidence placed on record, Tribunal has arrived at conclusion that driver of the first respondent is responsible for the accident. First respondent parked the vehicle in the middle of the road without due care and caution, which resulted in accident, hence finding of the Tribunal that the driver of the first respondent is responsible for the accident is sustainable.



He also contended that the Tribunal has considered the medical bills which was filed before the Tribunal and award has been passed. Similarly, even though Doctor who has examined the claimant has assessed the disability as 50%, the Tribunal has only taken 30% as disability, which is reasonable and the same need not be interfered with.

10. I have considered the submissions made by both sides and perused the records.

11. In this case, admittedly the FIR was registered against the claimant herein in which it is stated that claimant while driving the car hit on the parked vehicle belongs to the first respondent. The insurance company has also examined the driver of the Innova car who has admitted that at the time of accident, all the passengers have sustained grievous injuries and they were not in a position to give complaint. The Tribunal has considered the evidence of both claimant and driver of Innova car of first respondent has held that evidence of claimant is more probable than R.W1. The Tribunal has also observed that no final report was filed against the claimant. Since the Tribunal after considering the evidence has held that evidence placed on



the side of claimant is more probable and this Court finds no valid grounds to interfere with the said findings and the same is confirmed.

12. With regard to the quantum of compensation, no cross examination was not done questioning the veracity of the medical bills. In the absence of challenge of medical bills by way of evidence this Court is not inclined to reject the same. The Tribunal has assessed the disability at 30%, even though the Doctor has assessed the same at 50% and awarded Rs.3,000/- per percentage of injury. The accident was occurred in the year 23.01.2011 and norms followed during the relevant period for awarding compensation is Rs.2,000/- per percentage of injury and the same is not followed in this case, and the Tribunal has awarded Rs.3,000/- per percentage injury, which is against the settled principles of law, hence, this Court is inclined to revise the same. Therefore, the loss of income is arrived at Rs.60,000/- (Rs.2,000/- X 30%). Insofar as the compensation awarded in other heads are just, fair and reasonable and thereby, the same is confirmed.

13. In the light of the above discussion, the award of the Claims



Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent Disability	90,000/-	60,000/-	Reduced
2.	Pain & Suffering	40,000/-	40,000/-	Confirmed
3.	Medical Expenses	1,01,500/-	1,01,500/-	Confirmed
4.	Future Medical Expenses and Nourishment	30,000/-	30,000/-	Confirmed
5.	Medical Attendant	2,000/-	2,000/-	Confirmed
6.	Loss of Income during the treatment period	90,000/-	90,000/-	Confirmed
7.	Transportation Charges	5,000/-	5,000/-	Confirmed
	Total	Rs.3,58,500/-	Rs.3,28,500/-	Reduced by Rs.30,000/-

14. In the result:

(i) The Civil Miscellaneous Appeal is partly allowed by reducing the compensation awarded by the Tribunal to Rs.3,28,500/- from Rs.3,58,500/-.

(ii) The second respondent directed to deposit the above said compensation amount together with interest at the rate of 7.5% from the date of petition to the date of realization within a period of six weeks from



the date of receipt of copy of this order, less the amount, if any, deposited.

On such deposit being made, the above said compensation amount shall be deposited in any one of the nationalized bank in fixed deposit for a period of three years

(iii) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No
Internet : Yes/No

04.09.2023

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K.RAJASEKAR, J.

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To

- 1.The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate),
Tiruvannamalai.
- 2.The Section Officer,
VR Section, Madras High Court.

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