



C.M.A.No.361 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.361 of 2017

P.Munusamy @ Manickam

... Appellant

Vs

1.N.Baskaran

2.Reliance General Insurance Company Ltd.,

Raj Towers, Plot No.2054,

Second Avenue, Anna Nagar,

Chennai - 600 040

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 15.02.2016 made in M.C.O.P.No.7 of 2014 on the file of the learned III Additional District Judge, Motor Accident Claims Tribunal, Thiruvallur at Poonamallee.



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For Appellant : Mr.M.Sivakumar

For Respondents: No Appearance for R1

Mr.E.Rajadurai,
for Mr.M.B.Gopalan
for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant challenging the Award dated 15.02.2016 passed in M.C.O.P.No.7 of 2014 on the file of the learned III Additional District Judge, Motor Accident Claims Tribunal, Thiruvallur at Poonamallee.

2.The brief facts leading to the filing of the instant appeal are as follows:

On 29.10.2013 about 02.30pm, the petitioner was riding on a TVS XL, bearing Registration No.TN-18K-7768 from Pootchi



Athipedu to Arikkampedu Road. While he was going near Vellaikaran canal, a mini lorry, Swaraj Mazda bearing Registration No.TN-10J-0193, belonging to the 1st respondent driven by its driver, in a rash and negligent manner, came in the same direction, hit behind the TVS XL and thus caused the accident. Due to the impact, the petitioner sustained grievous injuries. The mini lorry which belonged to the 1st respondent was solely responsible for the said accident. Therefore, the appellant preferred a claim petition before the Motor Accident Claims Tribunal in M.C.O.P.No.7 of 2014 claiming compensation of Rs.1,63,000/- for the injuries sustained by him. Since the vehicle was insured with the 2nd respondent, the 2nd respondent is liable to pay compensation on behalf of the 1st respondent/owner of the vehicle.

3.The 1st respondent though served remained absent and was set *ex parte*. The 2nd respondent Insurance Company



had taken out a defence that the petitioner did not possess a valid driving license to drive the motor cycle and he was under the influence of alcohol while riding his motor cycle. He would submit that the accident was solely on account of negligence of the petitioner and not on account of the negligence of the driver of the mini lorry.

4.The Tribunal on considering the evidence on record, particularly, Ex.R.2 - Accident Register and Ex.R.3 - Discharge Summary held that the petitioner is responsible for the accident as he was under the influence of alcohol while riding his motor cycle and the petitioner did not possess a valid driving license at the time of the accident, dismissed the claim petition. Therefore, it is challenging this Award that the petitioner is before this Court.



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5.The learned counsel appearing for the appellant/claimant would submit that the accident was occurred due to the rash and negligent driving of the driver of the 1st respondent vehicle. On behalf of the respondents, no witness was examined to rebut the contentions. The Tribunal dismissed the claim based on the oral evidence which is unsustainable in Law.

6.Per contra, the learned counsel for the second respondent / Insurance Company would submit that the rider of the motorcycle was under the influence of alcohol and drove the vehicle in a rash and negligent manner at the time of accident and therefore, the first and second respondents are not liable to pay compensation to the appellant.



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7. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the material available on record.

8. PW1 has deposed that the accident occurred only due to the rash and negligent driving of the driver of the 1st respondent vehicle. Due to the accident, he sustained grievous injuries all over the body and immediately, he was admitted in the Government Stanley Hospital as in-patient from 29.10.2013 to 06.11.2013 and thereafter, as out-patient. He further denied the consumption of alcohol while riding his vehicle.

9. On perusal of the materials available on record, it is seen that on the complaint given by his brother, Ex.P.1 - First Information Report has been registered. Ex.P.1 disclosed that the accident occurred due to the rash and negligent driving of



the driver of the 1st respondent. On behalf of the respondents, no witness was examined to rebut the contentions. Moreover, there is no contra evidence by the respondents to disprove the averments in the First Information Report. Due to the accident, the petitioner has sustained grievous injuries and the Doctor assessed his disability @ 10%. It is further seen that the appellant suffered abrasion 6 x 4 cm below right eye lid and Tissue loss with contusion, abrasion 3x3, below nose involving philtrum, abrasion 2x2 right shoulder and multiple small abrasion of right foot. It is proved that the accident occurred due to the negligent driving of the driver of the 1st respondent vehicle. Hence, he is entitled to claim compensation.

10. According to the claimant, at the time of the accident, the claimant was doing agricultural work and earning a sum of Rs.12,000/- per month. Due to the injuries sustained in the accident and subsequent disability, the appellant is unable to do



any work. Therefore, taking into account the income of the injured as Rs.7,500/-, a sum of Rs.15,000/- ($\text{Rs.7,500} \times 2 = \text{Rs.15,000}$) is granted towards loss of income for two months.

11. Admittedly, the claimant took treatment at Government Stanley Hospital as in-patient from 29.10.2013 to 06.11.2013 and thereafter, as out-patient. The Doctor assessed the disability at 10%. Therefore, a sum of Rs.30,000/- ($\text{Rs.3,000/-} \times 10\% = \text{Rs.30,000/-}$) is granted towards disability by awarding Rs.3,000/- per percentage of disability. This Court awards a sum of Rs.20,000/- towards pain and suffering. A sum of Rs.5,000/- is granted under the head of attendant charges. Further, this Court grants a sum of Rs.5,000/- towards extra nourishment and Rs.5,000/- towards transportation. In view of the above, the amount granted by this Court under various heads are as follows:



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Head	Amount
Loss of Income (Rs.7,500/- X 2)	Rs.15,000/-
Pain and suffering	Rs.20,000/-
Disability (10%)	Rs.30,000/-
Attender charges	Rs.5,000/-
Extra nourishment	Rs.5,000/-
Transport expenses	Rs.5,000/-
Total	Rs.80,000/-

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The 2nd respondent/Insurance Company is directed to deposit the entire compensation amount of Rs.80,000/- with interest @7.5% per annum from the date of petition till the date of realization to the credit of M.C.O.P.No.7 of 2014 on the file of the learned III Additional District Judge, Motor Accidents Claims Tribunal, Thiruvallur at Poonamallee, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant is permitted to



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withdraw the entire award amount with proportionate accrued interest and costs by making necessary applications.

The claimant is directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimant. No costs.

05.04.2023

Index: Yes/No
Neutral Citation: Yes/No
AT

To

1.TheMotor Accident Claims Tribunal,
(III Additional District Court),
Thiruvallur at Poonamallee.

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



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A.A.NAKKIRAN, J.

AT

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