



C.M.A.(MD)No.901 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 16.11.2022

Delivered On : 09.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.901 of 2011

The Oriental Insurance Company Ltd.,
rep. by its Branch Manager,
Branch No.III, Simmakkal,
Madurai – 1.

.. Appellant /2nd Respondent

Vs.

1.S.R.Ramasamy

... 1st Respondent / 1st Respondent

2.Veerappan

... 2nd Respondent / Petitioner

(R2 declared as major & guardian discharged
vide order, dated 13.02.2013, made in M.P.
(MD)Nos.2&3/2011)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 09.02.2009, made in M.C.O.P.No.97 of 2005, on the file of the Motor Accident Claims Tribunal - District Judge, Sivagangai.

For Appellant

: Mr.S.Veeranasamy

For Respondents

: Mr.Jeen Joseph



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 09.02.2009, made in M.C.O.P.No.97 of 2005, on the file of the Motor Accident Claims Tribunal - District Judge, Sivagangai. The appellant herein is the second respondent, the first respondent herein is the first respondent and the second respondent herein is the claimant in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition, in M.C.O.P.No.97 of 2005, is as follows:

On 26.01.2005, at about 9.30 am., while the minor petitioner-Veerappan was riding his two wheeler in a slow and cautious manner, keeping the extreme left side of the road, a car bearing Registration No.TN-59-U-0929, came in a rash and negligent manner, dashed against the petitioner and caused him severe injuries. He was admitted in John Medical Centre for first aid and then, he was admitted in Apollo Specialities Hospital, Madurai and he took treatment as inpatient from 26.01.2005 till 09.02.2005. At the time of accident the minor claimant was aged about 16 years. Due to the accident, the petitioner could not walk, run or play and he claimed a sum of Rs.15,00,000/- as compensation.



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3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.97 of 2005, is as follows:-

The nature and mode of the accident is wrongly stated in the petition. The petitioner has sustained only simple injuries. The particulars of the treatment and duration of the treatment are to be proved. At the time of accident, the petitioner was minor, he drove the motorcycle in a rash and negligent manner. The owner of the motorcycle and the insurance company of the motorcycle are necessary parties to the case. The case is bad for non joinder of necessary parties. The claim is excessive. The driver of the car was not having valid driving licence. The policy conditions are violated. The respondent is not liable to pay compensation.

4. 4 witnesses were examined and 18 documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent. After considering both sides, the Tribunal awarded a sum of Rs.7,50,985/- as compensation to be paid by the respondents.

5. Against the award, the second respondent / appellant has filed this appeal, for enhancement of compensation, on the following grounds:-



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The Tribunal failed to consider that the claimant, who was aged about 16 years was not having valid driving licence. The Tribunal failed to consider that in the petition, it was alleged that the second respondent was overtaking the claimant's vehicle, at the time of the accident, but, in the charge sheet-Ex.P5, it is stated that the accident has happened while the claimant was crossing the road. The right side pumper of the offending vehicle was damaged and the right side light was broken, which will clearly prove that it was the claimant, who came along the middle of the road and that the claimant is responsible for the accident and that the evidence of P.W.2 is contrary to Ex.P1 and that the claimant is the tort feaser and that for 70% disability, the Tribunal has awarded Rs.1,40,000/-, without considering the fact that the claimant was only a student. The claimant was coming out from his college in his motorcycle, to join the main road, so, it is his duty to be more vigilant, regarding the traffic. The award is excessive.

6. On the side of the appellant, it is stated that it was the claimant, who dashed against the car and the minor claimant was at fault and that the driver admitted guilty, but, the criminal court records are not relevant to decide the claim petition and that there was no driving licence for the minor claimant.



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7. Certified copy of the F.I.R was marked as Ex.P1. Copy of M.V.I. report was marked as Ex.P2 and Ex.P3. Copy of the charge sheet was marked as Ex.P5. Copy of the extract in S.T.C.No.588 of 2005 was marked as Ex.P6. . From the evidence of P.W.4 and from Ex.P1 to P3, P5 and P6, it is decided that the driver of the bus is responsible for the accident.

8. The driving licence of the injured was not filed. The case of the claimant is that the claimant was aged about 16 years at the time of accident. Admittedly, the claimant was a minor. When the availability of driving licence was questioned in the counter, it is the duty of the claimant to prove that he was having valid driving licence. Allowing a minor to ride the two wheeler is illegal. Hence, it is decided that the claimant is liable for contributory negligence. 25% contributory negligence is fixed on the part of the claimant.

9. On the side of the appellant, it is stated that the driver of the car was not having valid driving licence and that the appellant is not liable to pay compensation. The appellant has not chosen to examine any witness or to mark any document. The appellant has not taken any steps to examine the official witness to prove that the driver of the car was not having valid driving licence.



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10. Wound certificate of the claimant was marked as Ex.P4. Discharge summary was marked as Ex.P7. Medical bills were marked as Ex.P10 to Ex.P12. Case sheet, dated 21.06.2005 was marked as Ex.P.14. Disability certificates were marked as Ex.P8, P15 and P17. X-rays were marked as Ex.P16 and P18.

11. P.W.3-Doctor has deposed that the minor claimant sustained 70% partial permanent disability, because of the fracture in the skull. The Tribunal has fixed the disability at 70% and has awarded Rs.1,40,000/- (Rs.2,000/- X 70 = Rs.1,40,000/-), which is reasonable.

12. On the side of the claimant, it is stated that the claimant took treatment as inpatient in Madurai Apollo Hospital for 15 days, he undergone surgery, again, he was admitted on 10.05.2005 and undergone another surgery and he took treatment as inpatient for 1 week for the second surgery. The Tribunal awarded Rs.5,78,985/- towards medical expenses, which is rounded off to Rs.5,79,000/-.

13. The Tribunal awarded Rs.25,000/- towards pain and sufferings, Rs.5,000/- towards extra nourishment, and Rs.2,000/- towards transportation, which are all reasonable.



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14. The total compensation is calculated as follows:-

For 70% disability	:	Rs. 1,40,000/-
Medical expenses	:	Rs. 5,79,000/-
Pain and sufferings	:	Rs. 25,000/-
Extra nourishment	:	Rs. 5,000/-
Transportation	:	Rs. 2,000/-
Total compensation	:	Rs. 7,51,000/-
		

After deducting 25% (Rs.1,87,750/-) towards contributory negligence, the claimant is entitled to Rs.5,63,250/-.

15. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation is reduced from Rs.7,50,985/- to **Rs.5,63,250/-**.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of **Rs.5,63,250/-** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. **Excess amount, if any, shall be refunded to the appellant / Insurance Company.**



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(iii) On such deposit being made by the appellant / Insurance Company, the second respondent herein / claimant is permitted to withdraw the award amount with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any.

09.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The District Judge,
Motor Accident Claims Tribunal,
Sivagangai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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