BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.08.2023

PRONOUNCED ON:30.11.2023

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**C.M.A(MD)No.359 of 2018**
**and**
**C.M.P.(MD)No.4748 of 2018**

Sri Ram General Insurance Company Ltd.,
represented through its Divisional Manager,
3rd Floor, Suguna Stores Buildings,
Anna Nagar,
Madurai – 625 020. : Appellant/Respondent No.2

Vs.

1.S.Thooyamani : Respondent No.1/Petitioner

2.K.Umasankar : Respondent No.2/
Respondent No.1

(Memo dated 10.07.2023 filed on 17.07.2023 in USR No.21865 is recorded as issuance of notice to R2 is dispensed with as no relief claimed against him vide Court order dated 18.07.2023)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 23.06.2016 made in M.C.O.P.No.233 of 2013, on the file of the Motor Accident Claims Tribunal, IV Additional Subordinate Court, Madurai.

For Appellant : Mr.D.Sivaraman

For Respondents :No Appearance for R.1
: R.2 - Dispensed with

**JUDGMENT**

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.233 of 2018, dated 23.06.2016, on the file of the Motor Accident Claims Tribunal / IV Additional Subordinate Judge, Madurai.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.7,48,573/- with interest at 7.5% pa., to the first respondent/claimant for the disability suffered by him consequent to an accident occurred on 15.11.2011, challenged the liability mulcted on it and also the quantum of compensation awarded by the Tribunal.

3. The case of the claimant is that on 15.11.2011, when the claimant was travelling in the first respondent's vehicle bearing Registration No.TN-10-U-2097, the driver of the said vehicle drove the same in a rash and negligent manner and dashed against the backside of the stationed lorry bearing Registration No.TN-69-1931 and as a result of which, the claimant has sustained serious injuries and that the accident was occurred only due to the rash and negligent driving of the first respondent's driver. It is his further case that he sustained fractures in his right leg and many other injuries all over his body, that after the accident, he was immediately taken to Government Hospital, Ramanathapuram, that thereafter, he was shifted to Vikram Hospital, Madurai, that the claimant, after taking inpatient treatment for two days, left to Malaysia for further treatment and that the claimant has suffered permanent disability and is not in position to perform his normal work as before and finds it very difficult to move, sit, squat, using toilets and claiming ladders.

4. The defence of the second respondent is that the driver of the lorry bearing Registration No.TN-69-1931 drove his vehicle on the

middle of the road without any indication and as such, the lorry driver alone is negligent in causing accident, that the claim petition is bad for non-joinder of owner and Insurer of the lorry and that the claimant has only suffered simple injuries and therefore, he is not entitled to claim compensation as claimed.

5. During trial, the claimant has examined himself as P.W.1 and two other witnesses as P.W.2 and P.W.3 and exhibited 9 documents as Exs.P.1 to P.9. The first respondent had remained exparte. The second respondent-Insurer has adduced neither oral evidence nor documentary evidence. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned order dated 23.06.2016 holding that the accident was occurred only due to the rash and negligent driving of the first respondent's driver, mulcted liability on the second respondent – Insurer and directed them to pay compensation of Rs.7,48,573/- with interest and costs. Aggrieved by the impugned award, the second respondent has preferred the present Civil Miscellaneous Appeal.

6. The points for determination are:

(1) Whether the Tribunal erred in mulcting the liability on the appellant/second respondent by holding that the accident was occurred only due to the rash and negligent driving of the first respondent's driver, despite showing that the lorry driver alone negligently parked his vehicle on the middle of the road, without any signal or indication and as such, the lorry driver alone was negligent in causing the accident?

(2) Whether the quantum of compensation awarded by the Tribunal is just and proper and in accordance with law?

**Points 1 and 2:**

7. It is pertinent to note that the accident and the involvement of the van bearing Registration No.TN-10-U-2097 and the lorry bearing Registration No.TN-69-1931 are not in dispute and the only dispute is as to who is responsible for the accident. The claimant, in his claim petition as well as in his evidence, would say that the driver of the van in which the claimant was travelling at that time has driven the vehicle in a rash and negligent manner and without noticing the parked vehicle, had dashed against the said vehicle, but whereas according to the second respondent/Insurer, the lorry driver alone negligently parked the vehicle

on the middle of the road, without any signal or indication and that therefore, the lorry driver alone was responsible for the accident.

8. As already pointed out, the claimant as P.W.1 would depose about the mode of accident as stated in the claim petition. Though P.W.1 was cross-examined at length, his evidence with regard to the mode of accident was not at al shaken during his cross-examination. As already pointed out, the first respondent who is the owner of the van, had remained exparte. The second respondent/Insurer has not at all adduced any evidence in support of their defence. Though the second respondent has alleged that the lorry driver was alone at fault, they have not chosen to examine the first respondent's driver to prove about the mode of accident. As rightly pointed out by the learned Counsel for the first respondent/claimant, there is absolutely no contra evidence with regard to the mode of accident. Considering the above, the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the first respondent's driver cannot be found fault with.

9. Now turning to the quantum of compensation, according to the claimant, he sustained fratures in femur bone, right gluteal region actetabulum and right hip joint. P.W.3 – Medical Officer, on examining the claimant, has certified that the claimant has sustained disability at 67.2%. But admittedly, P.W.3 has not given any treatment to the claimant. As rightly observed by the learned trial Judge, though P.W.3 would say that the claimant has suffered fractures in 2 to 6 rib bones and right knee, the same does not find place in the discharge report and taking note of the medical evidence, the Tribunal has rightly fixed the disability of the claimant at 55%. The Tribunal, taking note of the medical evidence, has decided not to apply the multiplier method and rightly applied percentage method and accordingly, the disability compensation was arrived at Rs.1,37,500/- (55 x Rs.2,500/-). Since the claimant has not produced any materials to prove his income, the Tribunal has fixed the monthly income at Rs.4,500/- and granted loss of income for 3 months at Rs.13,500/-. Considering the nature of injuries suffered, the period of inpatient treatment and other attending circumstances the amounts awarded under various heads viz., Rs. 25,000/- towards pain and sufferings, Rs.5,000/- towards transportation,

Rs.5,000/- towards nutrition and Rs.1,000/- towards loss of clothing and ornaments are reasonable and the same cannot be said to be excessive.

11. The learned Counsel for the appellant would submit that they are disputing the amount awarded under the head of medical expenses. The Tribunal, taking note of the medical bills under Exs.P.2, P.3 and X.4, has granted Rs.5,61,573/- towards the medical expenses. The learned Counsel for the appellant would submit that Serial Numbers in 1, 8, 15, 21,23,29,30,31,44 and 62 are not in the name of the claimant, but without considering the same, the Tribunal has awarded that amount and that Serial No.10 receipt is for payment of advance.

12. The claimant has not offered any reason or explanation for the same. Hence, the claimant is entitled to get Rs.86,907/- as per Ex.P.2. Ex.P.3 is in respect of the expenses incurred at Malaysia. The learned Counsel for the appellant would submit that even assuming that Ex.P.3 bills are genuine, the Tribunal has failed to notice that the claimant has paid only 4613.98 Malaysian Ringgits and the remaining amount was paid by ING Insurance Company as evident from Ex.P.3 and that therefore, the claimant is entitled to get 4938 Malaysian Ringgits towards medical expenses.

13. In support of his contention, the learned Counsel for the appellant has relied on the judgment of this Court in ***Cholamandalam MS General Insurance Co., Ltd., Vs. A.Saravanan and another*** reported in ***2012(1) TN MAC 606***, wherein this Court has specifically held that once the medical expenses spent for medical treatment is reimbursed by the Insurance Company, the claimant is not entitled to get the same under the name of the compensation and the relevant passages are extracted hereunder:

*"9. In United India Assurance Co. Ltd. v. Patricia Jean Majan, 2002 ACJ 1441, the Hon'ble Apex Court has held as follows:*

*'24. .... It is clear that the deductions are admissible from the amount of compensation in case the Claimant receives the benefit as a consequence of injuries sustained, which otherwise he would not have been entitled to. It does not cover cases where the payment received is not dependent upon an injury sustained on meeting with an accident....'*

*10. The principle enunciated in the said decision is a fitting answer to the issue involved in this Appeal that in case the Claimant receives the benefit, as a consequence of injuries sustained, then he is not entitled for the same as compensation once again. But it does not cover the cases where the amount of payment received is not dependent upon the injury sustained on meeting with the accident. Therefore, in my considered opinion, the case relied by the learned Counsel for the 1st Respondent, which was rendered based on the LIC Policy, cannot be made applicable to the facts of the case. So far as LIC Policy is concerned, the Policy holder is entitled for the payment of entire premium on maturity or the heirs are entitled for the payment in the event of his death. The payment under the Life Insurance Policy does not depend upon the injury sustained in meeting with the accident. On the other hand, as far as the Medi-Claim Policy is concerned, the amount is payable to the Claimant when he sustained injuries in an accident. Hence, the compensation for the injuries sustained by him under the head 'Medical Treatment' cannot be* *granted. Therefore, I am of the opinion that since the sum of `2,00,000/- has already been paid by the* Star Health *Insurance Company, the 1st Respondent is entitled only for the balance sum of Rs.88,100/- out of Rs.2,88,100/- spent by him. Hence, the sum of Rs.2,88,100/- awarded by the Tribunal under the head "Medical Expenses" is reduced to Rs.88,100/-. Consequently, the total amount of Rs.3,83,100/- is hereby reduced to Rs.1,83,100/-. Except this, the award passed by the Tribunal is confirmed in all other aspects."*

14. It is evident from Ex.P.3 – Bills that the claimant has produced four official receipts issued by Sentosa Medical Centre SDN. BHD. Kuala Lumpur and out of the four official receipts, the last one dated 09.12.2011 for 18 Ringgits is towards pharmacy bill and the other three receipts dated 08.12.2011 and 09.12.2011 for 2500, 938 and 4000 Ringgits were shown to be paid towards deposit. The claimant has produced another bill dated 09.12.2011 showing the total bill amount at 23,864.10 Ringgits and after deducting the amount paid at 11,500 Ringgits, the balance is shown as 12,365.10 Ringgits. The claimant has also produced discharge clearance slip, wherein it has been shown that

the payment type as self paying and the Insurance Company and the total bill amount is shown at 24837.10 Ringgits and the balance to be collected as 4938.30 Ringgits.

15. The learned Counsel for the appellant would submit that by relying on the discharge clearance slip that the claimant has only paid 4938.30 Ringgits, the claimant is entitled to get that amount. As already pointed out, the claimant has made deposits thrice totalling to 7456 Ringgits and as per the discharge clearance slip, the claimant has paid 4938 Ringgits, totalling 12,394 Ringgits and as such the claimant is entitled to the same, which is equivalent to Rs.1,98,304/- The claimant has also produced the x-ray and and scan bill under Ex.X.4 to show that he has incurred Rs.7,600/-. Considering Exs.P.2, P.3 and X.4, the claimant is entitled to get the total compensation of Rs.2,92,811/- under medical expenses. Accordingly, the claimant is entitled to get total compensation as follows:

| Sl. No | Description | Amount awarded by the Tribunal Rs. | Amount awarded by this Court Rs. | Award confirmed or enhanced or granted |
|---|---|---|---|---|
| 1 | For part permanent disability | 1,37,500/- | 1,37,500/- | confirmed |
| 2 | For pain and suffering | 25,000/- | 25,000/- | confirmed |
| 3 | For loss of income | 13,500/- | 13,500/- | confirmed |
| 4 | Medical expenses (Exs.P.2, P.3 and X4) | 5,61,573/- | 2,92,811 /- | Reduced |
| 5 | For Transportation | 5,000/- | 5,000/- | confirmed |
| 6 | For Nutrition | 5,000/- | 5,000/- | confirmed |
| 7 | For loss of clothing and ornaments | 1,000/- | 1,000/- | confirmed |
| | **Total** | **Rs. 7,48,573/-** | **Rs. 4,79,811/-** | **reduced** |

16. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal to the claimant is reduced from **Rs.7,48,573/- to Rs.4,79,811/-** along with interest at 7.5%pa., from the date of petition till the date of realization and costs. The appellant - Insurance Company is directed to deposit the modifed award amount along with accrued interest and costs, to the credit of above said M.C.O.P.No.233 of 2013, on the file of the Motor Accident Claims Tribunal / IV Additional Subordinate Court, Madurai, within a period of

four weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is entitled to withdraw the same. Consequently, the connected Miscellaneous Petition is closed. The parties are directed to bear their own costs.

**30.11.2023**

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1.The Motor Accident Claims Tribunal/
IV Additional Subordinate Court, Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

**K.MURALI SHANKAR,J.**

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.359 of 2018

30.11.2023