



CM.A.No.2676 of 2021

WEB COPY **IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Judgement Reserved on	07.03. 2024
Judgement Pronounced on	14.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No.2676 of 2021

and C.M.P.No.15350 of 2021

The Divisional Manager,
Shriram General Insurance Company Limited,
66, City Centre Complex, 2nd floor,
Kings Garden, Tirumalapillai Street,
T Nagar, Chennai

...Appellant

Vs.

1.Y.Soundarapandiyan
2.V.N.Sangeetha

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgement and decree dated 18.02.2021 made in M.C.O.P.No.493 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tirupattur and be pleased to



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dismiss the claim for compensation.

For Appellant : Mr.S.Dhakshnamoorthy

For RR1 : Mr.V.Pari Vallal

For R2 : Notice dispensed with

JUDGMENT

This Civil Miscellaneous Appeal is directed against the order dated 18.02.2021 made in M.C.O.P.No.493 of 2013 on the file of Motor Accident Claims Tribunal, Special Sub Court, Tirupattur.

For the sake of convenience, the parties are referred as described before the Tribunal.

2.Briefly stated, on 06.08.2011 the claimant was riding his motorcycle bearing Registration No. TN 25 L 7039 and at about 12.30 p.m when he was proceeding towards Vaniyambadi to Ambur NH road, near Vinnamangalam landmark hotel, a Tanker lorry bearing Reg.No. TN 23 X 2959 proceeding in



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front of the two wheeler, the driver of the lorry suddenly applied brake without giving signal or blowing signal light. Due to the same, the petitioner dashed on the back side of the lorry and sustained injuries all over the body. He was taken to the Government Hospital, Ambur and thereafter to Vellore CMC for treatment. The claimant is even now undergoing private treatment. At the time of accident, the claimant was 25 years old and was earning Rs.20,000/- per month by doing business. Accordingly, claim for compensation for Rs.10,00,000/- has been made by the claimant for the injuries suffered by him in the said accident.

3.The 1st respondent remained absent.

4.The 2nd respondent/Insurance Company resisted the claim of the claimant stating that the accident occurred due to the rash and negligent driving of the claimant and the FIR was also registered against the claimant. Hence, the 2nd respondent/Insurance Company is not liable to pay any compensation to the claimant.

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5.However, the claims Tribunal came to the conclusion that the accident occurred due to the negligent driving of the lorry driver and held that the claimant is entitled to claim compensation from the respondents. The Tribunal has awarded a sum of Rs.3,16,564/- carrying interest at the rate of 7.5% per annum.

6.Aggrieved by this, the present Appeal is preferred by the 2nd respondent/Insurance Company. Through this appeal, award has been challenged on the following grounds:

1.The claimant alone is responsible for the accident and therefore, the Insurance Company is not liable to pay the compensation;

2.The Tribunal was not justified in awarding Rs.90,000/- towards partial permanent disablement taking disability as 30% without any basis;and

3.The amount arrived by the Tribunal on the basis of medical bills requires interference. The amount paid as "advance deposit" was taken into



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account in addition to the actual expenses incurred as per Final Bill which is incorrect. Furthermore, the medical bills of one Mrs. Gowri was also taken into account, which ought to have been rejected by the Tribunal.

7. On the other hand, the learned counsel appearing for the claimant would submit that though the FIR was registered against the claimant, in Motor Accident cases, the preponderance of probabilities alone has to be taken into consideration and the question of beyond reasonable doubt do not arise as in the case of criminal jurisprudence. His further contention is that the disability certificate was marked with the consent of both sides and therefore, the same cannot be challenged by the Insurance Company before the appellate Court. He would further submit that, the medical bills were not objected by the Insurance Company at the time of marking before the Tribunal and therefore, the contention of the learned counsel for the Insurance Company that the amount arrived on the basis of medical bills requires interference cannot be accepted. Hence, the award passed by the learned Tribunal calls for no interference.



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8. Heard on both sides, records perused.

9. The Tribunal in the impugned award, came to conclusion that the accident took place only due to the negligent act of the driver of the 1st respondent's vehicle. On perusal of records, it is seen that the FIR was registered against the claimant based on the complaint lodged by the driver of 1st respondent's vehicle. As rightly held by the Tribunal, the lorry driver would never give a complaint by incriminating himself. Further, the Tribunal has rightly held that the cause of the accident has to be determined only on the basis of preponderance of probability and it does not require proof beyond reasonable doubt. Apart from that, it is the specific case of the respondents that the lorry was moving near the center median of the road for watering the plants in the median and one person was waving a red colour flag behind the lorry as a signal. Where as, the contention of the claimant is that the lorry was moving in the road and suddenly stopped without giving any signal. While so, the respondents ought to have examined the person who showed the red flag at the time of the accident. No independent witness was examined on the side



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of the respondents to establish that the claimant drove the vehicle in a rash and negligent manner. Therefore, the Tribunal has rightly held that the claimant has proved his case by probable evidence. The Insurance Company failed to establish that the lorry was not stopped suddenly without showing any signal as stated by the claimant. Though the Insurance Company has marked Ex.R.1 Investigation Report, the author of the document was not examined. No independent witness was examined to prove the manner of accident. Moreover, R.W.2, driver of the offending vehicle is only an interested witness. Furthermore, the accident had occurred on 06.08.2011 and the FIR was registered only on 16.08.2011 after lapse of 10 days. The Special Inspector of Police, Ambur Police Station, examined as R.W.3, has categorically admitted that he is not aware of the manner of accident. Neither the statement of the claimant nor the relevant records were produced by R.W.3 at the time of his examination. Hence, the respondent/Insurance Company failed to establish that the claimant was responsible to the accident. Just because the FIR is registered against the claimant, it cannot be construed that the claimant was responsible for the accident. Hence, the findings of the



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Tribunal in this regard is confirmed.

10.The next contention of the learned counsel for the Insurance Company is that, the claimant has underwent only conservative treatment and therefore, assessing the disability as 30% is on the higher scale. On Perusal of Ex.P.3 discharge summary, it is seen that the claimant has suffered head injury. The Doctor who had issued the disability certificate was not examined to speak about the manner in which assessment of disability was arrived. Therefore, the permanent disability assessed at 30% remains unexplained. Upon a careful consideration of the evidence, both oral and documentary, this Court takes a view that the assessment of disability as 30% is on a higher scale.

11. Having regard to the various materials available on record, this Court is of the considered view that the permanent disability suffered by the claimant can be reasonably fixed at 20% by applying the principle laid down in the judgment of this Court reported in **2013 (2) TN MAC 583** in the case of



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National Insurance Company vs. G.Ramesh for each percentage of disability Rs.3000/- has to be awarded. Hence, for 20% disability, a sum of Rs.60,000/- $= (20 \times 3000)$ is awarded.

12.The Tribunal has awarded a sum of Rs.1,57,064/- as medical expenses on the basis of Ex.P.7 medical bills. On perusal of records, it is seen that some of the medical bills amounting to Rs.3,975/- do not belong to the claimant. The Tribunal ought to have verified the medical bills before awarding the compensation.

13.Therefore, the said amount has to be deducted from the total medical expenses. Accordingly, the award sanctioned under the head of medical expense shall be reduced to Rs.1,53,089/-. With regard to advance amount, the learned counsel appearing for the appellant/Insurance Company would submit the Tribunal has erroneously taken into account the amount paid as 'advance deposit' in addition to the actual expenses incurred as per the final bill. However, the same is not established by the Insurance Company by examining the Hospital Authorities. Therefore, the said argument is



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unsustainable.

14. The compensation awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1	Loss of Disability	90,000	60,000	Reduced
2	Loss of Pain & Suffering	30,000	30,000	Confirmed
3	Extra Nourishment	5000	5000	Confirmed
4	Attender Charges	2000	2000	Confirmed
5	Transportation Expenses	4500	4500	Confirmed
6	Loss of Amenities	10000	10000	Confirmed
7	Loss of income during injury	18000	18000	Confirmed
8	Medical Expenses	1,57,064	1,53,089	
	Total	Rs.3,16,564	2,82,589	reduced by 33,975



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15. In the result, this Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.3,16,564/- awarded by the Tribunal is reduced to Rs.2,82,589/-. The appellant/Insurance Company is at liberty to withdraw the excess amount if already deposited by filing appropriate application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

.03.2024

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To:-

1.The Motor Accident Claims Tribunal,
Special Sub Court, Tirupattur

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K.GOVINDARAJAN THILAKAVADI, J.

vsn

Pre-Delivery Judgment made in

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