



C.M.A(MD)No.243 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.243 of 2017

and

Cros. Objection(MD)No.18 of 2018

C.M.A(MD)No.243 of 2017:

The Branch Manager,
United India Insurance Company Limited,
D.No.146, Kumar Complex,
Thiruchencode.

... Appellant/2nd Respondent

Vs.

1.Muniyasamy

... 1st Respondent/Petitioner

2.K.Nallaiyan

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal and modify the award passed in M.C.O.P.No.551 of 2012, dated 08.11.2016 by the Motor Accident Claims Tribunal cum Special Sub Court, Dindigul District.

For Appellant : Mr.J.S.Murali

For R-1 : Mr.K.Hemakarthykeyan

For R-2 : No appearance



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Cros. Objection(MD)No.18 of 2018:

Muniyasamy

... Cross Objector/1st Respondent
Petitioner

Vs.

1.The Branch Manager,
United India Insurance Company Limited,
D.No.146, Kumar Complex,
Thiruchencode.

... 1st Respondent/Appellant
2nd Respondent

2.K.Nallaiyan

... 2nd Respondent/2nd Respondent
1st Respondent

PRAYER: Cross Objection is filed under Order XLI, Rule 22 of the Civil Procedure Code, to allow the claim petition entirely in M.C.O.P.No. 551 of 2012 on the file of the Motor Accident Claims Tribunal (V Additional District Court), Madurai and to allow the cross objection.

For Cross Objector : Mr.K.Hemakarthiskeyan

For R-1 : Mr.J.S.Murali

COMMON JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the award passed in M.C.O.P.No.551 of 2012 on the file of the Motor Accident Claims Tribunal cum Special Sub Court, Dindigul



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District, primarily on the ground of liability.

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2. According to the injured claimant, while he was walking on the road, a two-wheeler owned by the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against him. Due to the said impact, he had sustained grievous injuries. According to the injured claimant, he is 28 years old and he is working as a Tea Master and earning a sum of Rs.4,500/- per month. Hence, he prayed for a compensation of Rs.3,00,000/-.

3. The Insurance Company has filed a counter specifically contending that the rider of the two-wheeler was not having valid driving license at the time of the accident. The owner of the two-wheeler had remained *ex parte*.

4. The Tribunal had arrived at a finding that the accident has taken place due to the negligence on the part of the rider of the two-wheeler. However, it has proceeded to mulct the liability upon the Insurance Company on the ground that, Insurance Company has not issued any notice to the owner of the vehicle for production of the driving license.



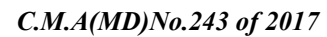
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The Tribunal has further proceeded to award a compensation of Rs.1,28,000/-. This award is under challenge in the present appeal.

5. According to the learned Counsel appearing for the appellant, the Insurance Company has taken a specific stand in the counter that, the rider of the two-wheeler was not having valid driving license on the date of the accident. However, the first respondent has not chosen to appear before the Court and defend the case. In such circumstances, the Court ought to have drawn adverse inference as against the owner of the two-wheeler and should have ordered pay and recovery.

6. The owner of the two-wheeler though has been served in the appeal, he has not chosen to appear either in person or through Counsel.

7. The claimant has filed a cross appeal in Cross Objection (MD)No.18 of 2018 seeking enhancement of compensation. The learned Counsel appearing for the cross objector had contended that the claimant has sustained grievous head injuries and therefore, the Tribunal was not right in reducing the percentage of disability that was arrived at by the Doctor from 35% to 20%. He further contended that the claimant being a



9. The Insurance Company has taken a specific stand in their counter that the rider of the two-wheeler did not have a valid driving license at the relevant point of time. The owner of the two-wheeler having received notice in the claim petition has not chosen to appear. Therefore, adverse inference has to be drawn to the effect that the rider of the two-wheeler was not having any driving license at the relevant point of time. The Tribunal was not right in mulcting the liability upon the Insurance Company on the ground that they have not issued notice to the owner of the two-wheeler. Despite receiving notice from the Court, the owner has not chosen to appear. In such circumstances, the award of the Tribunal in mulcting liability jointly and severally upon the owner and the Insurance Company is not legally sustainable. The Tribunal



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ought to have directed the Insurance Company to satisfy the award and thereafter, recover the same from the owner of the two-wheeler.

10. A perusal of the award indicates that the claimant has sustained grievous head injuries. Based upon the injury sustained by him, a disability certificate was issued to him under Exhibit P.6. A perusal of Exhibit P.6 indicates that the disability to an extent of 35%. However, the Tribunal has taken it as 20% without assigning any legally acceptable reason. In such circumstances, this Court is of the view that the disability could be fixed at 35%. The Tribunal has awarded Rs.50,000/- twice under the head of permanent disability and also under the head of grievous injuries and the same is not correct. It could be seen from Exhibit P.4 that the deceased was admitted to the hospital between 23.11.2003 and 02.12.2003. Considering the fact that the injured person had sustained serious injuries in the head, he could not have attended to his duties for nearly a month. Therefore, The Tribunal ought to have awarded one month salary under the head of loss of income during the treatment period.



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11. In view of the above said deliberations, the award of the Tribunal is re-assessed as follows:

S.No.	Heads	Compensation
01.	Partial permanent disablement 35 X 2,500	Rs.87,500/-
02.	Medical Expenses	Rs.8,000/-
03.	Extra Nourishment	Rs.10,000/-
04.	Pain and Sufferings	Rs.10,000/-
05.	Loss of income during treatment	Rs.4,500
06.	Attendant charges	Rs.5,000/-
	Total	Rs.1,25,000/-

12. As far as the prayer for enhancement of compensation is concerned, this Court is of the view that the Tribunal has fixed reasonable compensation and there is no scope for any further enhancement.

13. The appeal is allowed by directing the Insurance Company to satisfy the award and thereafter recover the same from the first respondent in the claim petition by following the judgment reported in **2004 (1) TN MAC (SC) 211 (Oriental Insurance Co.Ltd., Vs. Shri Nanjappan & Others).**



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14. In fine, the Civil Miscellaneous Appeal stands allowed to the extent as stated above and the Cross Objection in Cros. Objection (MD)No.18 of 2018 stands dismissed. There shall be no order as to costs.

10.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Motor Accident Claims Tribunal cum
Special Sub Court,
Dindigul District.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
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