



C.M.A.No.2166 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.03.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.2166 of 2022

B.Nithyanandham

... Appellant

VS.

1.R.Rajguru

2.M/s.Rliance Insurance Co., Ltd.,
No.6, Haddows Road, Reliance House,
6th Floor, Nungambakkam,
Chennai-600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 27.01.2022 passed in M.C.O.P.No.8770 of 2015 by the IV Motor Accident Claims Tribunal at Chennai, IV Small Causes Court, at Chennai and enhance the award from amount of Rs.3,54,400/- to Rs.4,54,400/- (Four lakhs and Fifty four thousands and four hundred only) as restricted prayed before this Court and direct the 2nd respondent to pay the award amount along with 1st respondent jointly.



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For Appellant : Mr.T.G.Ravichandrran

For R2 : Mr.P.Suresh Srinivasan

For R1 : Notice Returned

J U D G M E N T

The appeal is filed by the injured/claimant questioning the award of compensation passed by the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai in M.C.O.P.No.8770 of 2015, dated 27.01.2022.

2. It is the case of the appellant/claimant that on 06.09.2015 when he was standing in the left hand side of Seni Amman Koil Street near Karumari Amman Nagar Junction in front of Tea Shop, a Car belonging to the 1st respondent insured with the 2nd respondent came in a rash and negligent manner and hit the claimant. As a result of the accident, the claimant sustained grievous injuries. Hence, a claim petition was filed seeking compensation of Rs.9,00,000/- against the respondents.

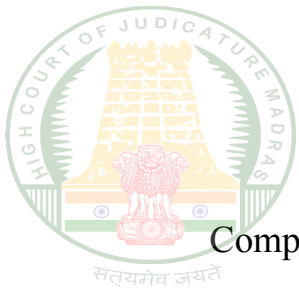


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3. The 1st respondent remained *exparte* before the Tribunal and the claim was contested by the 2nd respondent-insurance company by denying manner of accident as described in the claim petition. The 2nd respondent-insurance company also raised a point that cheque issued by the 1st respondent for payment of premium was dishonoured and hence, there was no privity of contract between the 2nd respondent and the 1st respondent. Therefore, the 2nd respondent-insurance company sought for exoneration.

4. Before the Tribunal, the appellant/claimant was examined as PW.1 and on his behalf, 7 documents were marked as Exs.P1 to P7. On behalf of the 2nd respondent/Insurance Company, it's Official was examined as RW.1 and 5 documents were marked as Exs.R1 to R5. The Disability Certificate issued by the Medical Board to the claimant was marked as Ex.C1.

5. The Tribunal on appreciation of evidence available on record, came to the conclusion that the accident had occurred only due to negligence of the driver of the car belongs to the 1st respondent insured with the 2nd respondent. The Tribunal also concluded that the cheque issued by the 1st respondent for payment of premium to the 2nd respondent/Insurance



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Company got dishonoured and hence, exonerated the 2nd respondent/Insurance Company and passed award against the 1st respondent by directing him to pay a sum of Rs.3,54,400/- as compensation to the claimant. Aggrieved by the same, the claimant has come by way of this appeal.

6. The learned counsel appearing for the appellant/claimant would submit that the accident had occurred on 06.09.2015 and cheque issued to the 2nd respondent by the 1st respondent was also dishonoured only on 06.09.2015. In the absence of any evidence on record to show that the policy was cancelled by the 2nd respondent and the same was intimated to the 1st respondent prior to the accident, the Tribunal ought not have exonerated the Insurance Company. In support of the said contention, the learned counsel relied on the judgment of the Apex Court in ***United India Insurance Co. Ltd. vs. Laxmamma and others*** reported in ***2012 ACJ 1307***. The learned counsel further submitted that the amount awarded by the Tribunal under the heads paid and sufferings and loss of amenities are very much on lower side.



7. The learned counsel appearing for the 2nd respondent/Insurance

Company would submit that since the cheque issued by the 1st respondent for payment of premium got dishonoured, the Tribunal was justified in exonerating the Insurance Company as there was no privity of contract between the 1st respondent and 2nd respondent. The learned counsel further submitted that having applied multiplier method and awarded compensation, the Tribunal ought not have awarded any amount under the head loss of income separately.

8. It is seen from Exs.R1 to R5, it is clear that the 1st respondent issued a cheque for payment of premium on 31.08.2015 and policy of insurance was issued in favour of the 1st respondent on 04.09.2015. The effective date of policy is from 06.09.2015 to 05.09.2016. A perusal of Ex.R1 makes it clear that 2nd respondent received a communication from it's banker on 06.09.2018 that the cheque issued by the 1st respondent for payment of premium was dishonoured due to insufficient funds. However, the 2nd respondent has not produced any document to show that subsequent to the receipt of intimation from the bank the policy was cancelled and the cancellation of the policy was intimated to the insured prior to the accident.



Therefore, absolutely there is no evidence available on record to show that the policy issued by the 2nd respondent in favour of 1st respondent was cancelled and necessary intimation was given to the 1st respondent/insured prior to the accident.

9. In ***United India Insurance Co. Ltd. vs. Laxmamma*** case cited supra while considering similar question, the Apex Court observed as follows:-

“19. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorised insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of sections 147 (5) and 149 (1) of the M.V. Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid for premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company



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cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.”

10. Therefore, it is clear that even in cases where the cheque issued for payment of premium is dishonoured, the liability of insurer to pay the amount to the third parties under Section 149(1) of Motor Vehicles Act, 1988 will cease only on cancellation of the policy and intimation of the same to the insured. In the case on hand, absolutely there is no evidence available on record to show that subsequent to dishonour of the cheque, the policy was cancelled and necessary intimation was given to the insured prior to accident. Therefore, as per the law laid down by the Apex Court in ***Laxmamma*** case cited supra, the liability of the 2nd respondent-Insurance Company as against the claimant continues and the Tribunal is not justified in exonerating the Insurance Company. Hence, the finding of the Tribunal to that effect is set aside. Therefore, the 2nd respondent-Insurance Company is directed to pay award amount to the claimant and it is at liberty to recover the said amount from the 1st respondent/insured.



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WEB COPY 11. Coming to the question of quantum, it is seen from the award passed by the Tribunal, it adopted multiplier method and calculated the compensation for 10% disability. From the evidence of PW.1, it is clear that he suffered fracture in the left hip and the same has interfered with his avocation as painter. Therefore, the Tribunal was justified in applying multiplier method. Having applied multiplier method and quantifying compensation amount for disability, the Tribunal need not have awarded a sum of Rs.20,000/- separately under the head loss of income, hence, the same is set aside.

12. Taking into consideration the nature of injury and hospitalisation period, the amount of Rs.15,000/- and Rs.10,000/- ordered by the Tribunal respectively for pain and suffering and loss of amenities are increased to Rs.30,000/- and Rs.20,000/-. Once the amount is ordered under the head pain and suffering, the claimant is not entitled to another sum of Rs.5,000/- separately under the head mental agony. Therefore, the same is set aside. The amount awarded by the Tribunal under various other heads are confirmed. Accordingly, the amount quantified by the Tribunal appear to be



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reasonable and the same requires no enhancement. Therefore, the award

passed by the Tribunal affirmed with following adjustments:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Disability	Rs.2,85,600/-	Rs.2,85,600/-	Confirmed
2.	Medical Expenses	Nil	Nil	-
3.	Loss of Income	Rs.20,000/-	-	Set Aside
4.	Pain and Sufferings	Rs.15,000/-	Rs.30,000/-	Enhanced
5.	Transportation Expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
6.	Nutrition Expenses	Rs.10,000/-	Rs.10,000/-	Confirmed
7.	Damages to Clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
8.	Attender charges	Rs.2,800/-	Rs.2,800/-	Confirmed
9.	Loss of Amenities	Rs.10,000/-	Rs.20,000/-	Enhanced
10.	Mental Agony	Rs.5,000/-	-	Set Aside
Total		Rs.3,54,400/-	Rs.3,54,400/-	Confirmed with adjustments

13. In view of the discussions made earlier, the 2nd respondent-Insurance Company is directed to pay award amount of the Rs.3,54,400/- to the claimant and recover the same from the 1st respondent. The 2nd respondent-Insurance Company is given four weeks time to deposit the said



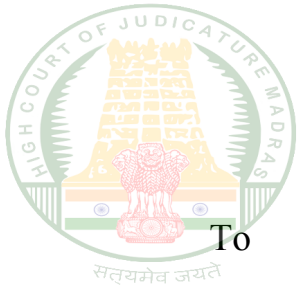
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award amount together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, after deducting the amount deposited, if any, to the credit of M.C.O.P.No.8770 of 2015 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai. On such deposit, the appellant/claimant is entitled to withdraw the award amount by making formal application.

14. With the above direction, the Civil Miscellaneous Appeal is partly allowed. No costs.

03.03.2025

Index :Yes / No
Speaking order :Yes / No
Neutral Citation :Yes / No
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To

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- 1.The IV Motor Accident Claims Tribunal,
IV Small Causes Court, Chennai.
- 2.M/s.Reliance Insurance Co., Ltd.,
No.6, Haddows Road, Reliance House,
6th Floor, Nungambakkam,
Chennai-600 006.
- 3.The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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