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CMA.No.1041 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.1041 of 2022

A.Arumugam

... Appellant

Vs.

1. N.Shanmugam

2. The Branch Manager,
The National Insurance Company Ltd.,
Anuradha Complex, third floor, Bangalore Main Road,
Opp. to Raja Theatre, Krishnagiri 635 001. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 23.12.2016 made in MCOP No.206 of 2015 on the file of the Chief Judicial Magistrate Court, Motor Accident Claims Tribunal, Krishnagiri.

For appellant : Mr. Mukund R Pandiyan

For Respondent : Ms.R.Sree Vidhya for second respondent

JUDGMENT



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This civil miscellaneous appeal is filed by the claimant aggrieved by the exoneration of the second respondent /insurance company from paying the compensation amount.

2. It is not in dispute that the claimant suffered grievous injury in a road accident that had taken place on 06.06.2014. According to the claimant/ appellant, he was proceeding in a TVS motorcycle slowly and steadily by observing traffic rules and while he was nearing Chenttiyampatti over bridge, the driver of the Maruti car belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the two wheeler of the claimant. As a result of accident, the claimant sustained comminuted fracture in his right leg and hence, he filed a claim petition seeking compensation of Rs.15,00,000/- before the Tribunal.

3. The first respondent/ owner of the vehicle filed counter and opposed the claim petition only on the ground that the accident had occurred due to the fault of the injured alone. The second respondent/ insurance company remained exparte before the Tribunal.



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4. Before the Tribunal, the appellant was examined as PW1 and a Doctor, who treated the appellant/claimant was examined as PW2. On the side of the claimant, 10 documents were marked as Ex.P1 to Ex.P10. No one was examined on the behalf of the respondents and no document was marked.

5. The Tribunal, based on the evidence available on record, came to the conclusion that at the time of accident, there was no valid policy and hence, exonerated the second respondent/ insurance company from the liability of paying the compensation. Further, based on the evidence of Doctor/ PW2, the Tribunal fixed functional disability at 20% and adopted multiplier method and awarded a sum of Rs.6,23,400/- as compensation to the claimant. Aggrieved by the exoneration of the insurance company, the claimant has come before this court.

6. The learned counsel for the appellant by taking this court to



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M.V. Report Ex.P5, submits that the Motor Vehicle inspection report clearly established that at the relevant point of time, the Maruti car belonging to the first respondent was insured with the second respondent/ insurance company and hence, he submits that the order of exoneration of insurance company by the Tribunal from paying compensation is not sustainable.

7. The learned counsel for the second respondent/ insurance company would submit that the Tribunal clearly mentioned in the award that the insurance policy was issued for a period from 08.08.2013 to 07.08.2014 and there was no evidence to show that there was a policy existing on the date of accident that had occurred on 07.06.2012.

8. It is seen from the Ex.P1 FIR that the accident had occurred on 06.06.2014. In Ex.P5 Motor Vehicle Inspection report, it is clearly mentioned that the accident had taken place on 06.06.2014. Therefore, the Tribunal committed an error in holding that the accident had occurred on 07.06.2012, before the policy period. A perusal of M.V.



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Report, marked as Ex.P5 would suggest that there was an existing policy covering the first respondent's vehicle for a period from 08.08.2013 to 07.08.2014. Since the accident had occurred on 06.06.2014 during the continuous period of policy, the Tribunal committed an error in exonerating the insurance company. Therefore, this court holds that there was a valid policy in existence on the date of accident and hence, the respondents 1 and 2 are jointly and severally liable to pay compensation to the claimant/appellant.

9. The learned counsel for the second respondent insurance company further submits that there is no evidence to show that the disability suffered by the claimant, due to the road accident, had interfered with his avocation and hence, the Tribunal ought not have adopted multiplier method.

10. A perusal of Evidence of PW2 and the disability certificate marked as Ex.P7 would indicate that the claimant suffered fracture of both tibia and fibula bones in his right leg and the fractured bones were not properly united. It is also stated by the PW2 that due to the



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malunion of fractured bones, the claimant is not in a position to stand for a while or squat. It is also stated by him that, the claimant cannot walk for a long. In the claim petition, it was also pleaded by the claimant that he was engaged in building mason work. Therefore, from the evidence of PW2 and Ex.P7, it is clear that the disability suffered by the claimant would certainly interfere with his avocation and hence, the Tribunal was justified in adopting multiplier method.

11. The notional income at Rs.9,000/- fixed by the Tribunal for the accident that had taken place on 06.06.2014 appears to be very conservative one. Therefore, the amount of Rs.5,18,400/- awarded by the Tribunal towards loss of disability, by adopting multiplier method need not be interfered with.

12. The amounts awarded under various other heads by the Tribunal are also very reasonable and hence they are confirmed.

13. Accordingly, I do not find anything to interfere with the



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award passed by the Tribunal with regard to the quantum of compensation. As far as the liability is concerned, this court holds that the respondents 1 and 2 are jointly and severally liable to pay the compensation amount awarded by the Tribunal to the appellant/claimant.

14. It is brought to the notice of this court that, while condoning the delay of 826 days in preferring the appeal by the appellant/claimant, this court vide order dated 20.04.2022 in CMP No.4460 of 2022 observed that the claimant was not entitled to claim interest for the said delay period.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,23,400/- is confirmed. The claimant is entitled to get the above compensation amount together with interest at 7.5% per annum (**excluding the default period of 826 days, as per the order of this court in CMP No.4460 of 2022, dated 20.04.2022**) from the date of petition till the date of deposit.



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16. **The second respondent/insurance company** is directed to deposit the compensation amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of **four weeks** from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn by making formal application before the Tribunal. There shall be no order as to costs.

04.03.2025

Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
mst

To

1. The Chief Judicial Magistrate Court,
Motor Accident Claims Tribunal,
Krishnagiri.
- 2 . The Section Officer,
V.R.Section, Madras High Court,
Chennai-104.



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S.SOUNTCHAR, J.

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