**(2013) 09 MAD CK 0120**

**In the Madras High Court**

**Case No :** C.M.A. No. 2876 of 2008

The Divisional Manager — APPELLANT

Vs

J. Pannerselvam and T. Dhandapani — RESPONDENT

**Date of Decision :** 11-09-2013

**Acts Referred:**

**Citation :** (2013) 09 MAD CK 0120

**Hon'ble Judges :** C.S. Karnan, J

**Bench :** Single Bench

**Advocate :** C. Ramesh Babu, for the Appellant;

**Final Decision :** Dismissed

## Judgement

C.S. Karnan, J.—The appellant/second respondent has preferred the present appeal against the judgment and decree dated 30.04.2008,

made in M.C.O.P. No. 455 of 2005, on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Cuddalore. The short facts of the

case are as follows:-

The claimant was travelling as a pillion rider on the motorcycle bearing registration No. TN02 D0998 and ridden by one T. Dhandapani on the

Chidambaram-Cuddalore main road, on 27.12.2004, at about 08.00 p.m., and at that point of time, a pedestrian had suddenly crossed the road,

hence the rider of the motorcycle applied sudden brake, as a result the claimant fell down to the ground and sustained grievous injuries. Therefore,

he filed a claim petition, claiming a compensation of Rs. 6,00,000/-, against the owner and insurer of the vehicle.

2. The Insurance Company had filed a counter statement and refuted the claim petition and stated that there was no such accident that was

 

committed by the rider of the motorcycle. The rider of the motorcycle did not possess a valid driving licence and the vehicle was also not covered

under valid documents. The Insurance Company denied the age, income and the nature of injuries sustained by the claimant.

3. On considering the averments of both sides, the Tribunal had framed two issues namely:

i. Due to whose negligence was the accident caused? and

ii. Whether the claimant is entitled to receive compensation? If so, what is the quantum of compensation?

4. On the petitioner''s side two witnesses were examined as P.W.1 and P.W.2 and nine documents were marked as Exs. P1 to P9 namely FIR,

Motor Vehicles Inspector, Accident Report, Medical Discharge Summary, Policy Copy, Driving Licence, medical Bills, X-ray and Disability

Certificate. On the respondents'' side one witness was examined as R.W.1 and one document namely policy copy marked as Ex. R1.

5. P.W.1 had adduced evidence stating that on 27.12.2004, at about 08.00 p.m., he was proceeding as a pillion rider along with the rider one T.

Dhandapani, on the motorcycle bearing registration No. TN02 D0998, on Chidambaram-Cuddalore main road and at that point of time suddenly

a pedestrian had crossed the road, therefore, the rider of the motorcycle immediately applied the brake and as a result, he fell down from the bike

and sustained bone fracture injuries on his right leg.

6. P.W.1 further stated that he had been rushed to a private hospital, wherein a surgical operation had been conducted on his right leg and steel

plate with screw was fixed. Further, he stated that he is a male nurse attached to Municipality Hospital, Cuddalore and was earning a sum of Rs.

6,117/- as monthly salary and he had spent a sum of Rs. 32,000/- as medical expenses.

7. P.W.2 Doctor had adduced evidence on the same line of P.W.1 regarding nature of injuries and mode of treatment and he assessed the

disability as 50%.

8. R.W.1 had adduced evidence that the said vehicle had not been covered under a comprehensive insurance, but only an act policy as such the

Insurance Company is not liable to pay compensation.

9. On considering the evidence of the witnesses and on perusing the documents

marked by them and on hearing the arguments of the learned

counsels on either side, the Tribunal had awarded a sum of Rs. 1,30,000/- with interest at the rate of 7.5% per annum.

10. Against the said award, the Insurance Company has filed the above civil miscellaneous appeal.

11. The highly competent counsel for the appellant Insurance Company has argued that the Tribunal had awarded a sum of Rs. 50,000/- under the

head of disability and again a sum of Rs. 8,000/- had been awarded under the head of injuries, which is redundant. The Trial Court had granted a

sum of Rs. 10,000/- under the head of future medical expenses, which is not pertinent to the instant case. The Doctor had assessed the disability as

50%, which is on the higher side. The vehicle has been covered under the act policy. Therefore, the Insurance Company has to be exonerated

from it''s liability and the same has been established before the Trial Court by way of oral and documentary evidence.

12. The highly competent counsel for the claimant has argued that the first information report has been registered against the rider of the motorcycle

under rash and negligence ground. The owner of the vehicle had remitted third party premium of Rs. 160/- and the two wheeler is a two seater

capacity. Therefore, the policy is covered for the said vehicle and as such the insurer is liable to pay compensation. The claimant had sustained

multiple bone fracture injuries on his right leg and a surgical operation was conducted and a steel plate with screws were fixed in the operated area

and the fractured bone got malunited. The claimant had spent a sum of Rs. 32,000/- towards medical expenses.

13. On considering the facts and circumstances of the case, arguments advanced by the learned counsels on either side and on perusing the

impugned award of the Tribunal, this Court does not find any discrepancy in the conclusion arrived at regarding negligence, liability and quantum of

compensation. Further, this Court is of the view that a criminal case had been levelled against the rider of the motorcycle and further as per P.W.2

Doctor''s evidence the claimant had sustained 50% disability and it is seen from the records that he had spent a sum of Rs. 32,000/- under the

head of medical expenses, as such the quantum of compensation is appropriate in the instant case. However, this Court is inclined to restructure the compensation as follows:

i. Rs. 50,000/- under the head of disability,

ii. Rs. 32,000/- towards medical expenses,

iii. Rs. 5,000/- towards transport expenses,

iv. Rs. 5,000/- towards nutrition,

v. Rs. 5,000/- towards attender charges,

vi. Rs. 8,000/- towards loss of earning during treatment,

vii. Rs. 25,000/- towards loss of amenities, loss of comfort, since the claimant''s fractured bone is malunited as per Doctor''s evidence.

14. This Court''s further view is that the appellant Insurance Company officials admitted that the owner of the vehicle had remitted a sum of Rs.

160/- towards third party premium. Therefore, the Insurance Company will not be exonerated from it''s liability.

15. On an earlier occasion, this Court directed the appellant Insurance Company to deposit the entire compensation amount with accrued interest.

Now, the claimant is at liberty to withdraw the entire compensation amount with accrued interest thereon, lying in the credit of M.C.O.P. No. 455

of 2005, on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Cuddalore. In the result, this civil miscellaneous appeal is

dismissed and the judgment and decree dated 30.04.2008, made in M.C.O.P. No. 455 of 2005, on the file of the Motor Accident Claims

Tribunal, Additional Sub Court, Cuddalore, is confirmed. Consequently, connected miscellaneous petitions are closed. No costs.