IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.2.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.1907 of 2010

The National Insurance Co.Ltd.,
74-A, Paramathi Road,
Namakkal ... Appellant /3rd respondent

-Versus-

1.R.Eswaran
2.Chinnapandian @ Pandian ...Ist Respondent/Petitioner
3.K.Natarajan ...2 & 3rd Respondents/Ist & 2nd Respondent
(Respondents 2 & 3 exparte in lower court
and hence notice may be dispensed with)

This civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree in M.C.O.P.No.1 of 2007 dated 29.12.2008 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Erode.

For Appellant : Mr.M.B.Raghavan
For Respondents :Mrs.S.Jeevitha Rani
for Mr.A.Sivaji for R1
RR 2 & 3-Exparte

J U D G E M E N T

The appeal has been filed by the Insurance Company against the award of Rs.2,98,690/- fastening liability on it for the injuries sustained by the first respondent in the accident occurred on 21.10.2003.

2. Heard Mr.M.B.Raghavan, learned counsel appearing for the appellant and Mrs.S.Jeevitha Ramani, representing Mr.A.Sivaji, the learned counsel appearing for the first respondent.

3. It is seen from the records that while the first respondent-claimant was standing on the road, the crane insured with the appellant driven rash and negligently, ran over the left leg of the claimant. The Tribunal taking into consideration of the fact that the accident occurred on the road accident; The crane ran over the left leg of the claimant; and that Filing of FIR against the driver

of the crane and Ex.P7, the judgement of the Criminal Court, came to the conclusion that the accident occurred because of rash and negligent driving of the crane. The said finding is based on evidence and it cannot be disturbed.

4. Learned counsel appearing for the appellant would point out by producing the insurance policy that there is no extra premium paid for the cleaner. He would submit that there is cover for the cleaner in the policy.

5. A sum of Rs.152/- was paid as loading on DP Premium, which represents the increase of cost of basic premium and it cannot be construed as policy cover for the cleaner. The said contention has got force. The finding of the Tribunal that the first respondent alleged to have worked as a cleaner in the crane and that he has cover of policy is set aside.

6. However, irrespective of the facts whether he worked as a cleaner or not he would have come under the definition of third party as he was ran over by the crane on the public road. Therefore, he is entitled to compensation and the insurance company has to pay the compensation amount, as policy is in force. One another aspect is that earlier the claimant, filed a petition under Workmen Compensation Act and the same was withdrawn and no adjudication was done. Hence, there is no impediment for the first respondent to file claim petition under the provisions of the Motor Vehicles Act.

7. Though the insurance company filed an appeal only on the ground of liability, a close scrutiny of the award would show that the Tribunal committed serious error by determining the disability at 35% instead of 50% fixed by the doctor. The first respondent-claimant was run over on the left leg, and his left leg was amputated below the knee as evident from the wound certificate. That apart, the Tribunal itself has given a finding in paragraph-18 regarding amputation. In the absence of contra evidence, the Tribunal atleast should have determined the disability at 50%. Therefore, this court determines 50% disability.

8. The first respondent-claimant is alleged to be a cleaner and because of amputation of leg, it is impossible for him to do normal work and he cannot do the work, which he would have done with normal leg. Therefore, the earning power of the claimant is affected. In view of that multiplier method is adopted. The Tribunal rightly determined the monthly income of Rs.4500/-. However, the Tribunal wrongly deducted 1/3 towards personal expenses, which can be done only in case of death. It is proved before the Tribunal by Ex.P9, Transfer Certificate that the claimant was 16 years and the proper multiplier would be 16. Therefore, the loss of income is calculated as follows:

Rs.4500/- X 12 X 16 = Rs.8,64,000/-.

9. Since the first respondent is not married, because of amputation of leg, no woman would come forward to marry him. Hence a sum of Rs.50,000/- is awarded towards loss of marital prospects. Rs.20,000/- towards pain and suffering, Rs.9000/- towards extra-nourishment, Rs.1000/- towards loss of clothes, Rs.50,000/- towards medical expenses, awarded by the Tribunal are reasonable and the same are confirmed. Therefore, the award of Rs.2,98,690/- is enhanced to Rs.9,94,000/-, in the appeal filed by the Insurance Company, even in the absence of any cross appeal or objection by the respondents, invoking order 41 Rule 33 C.P.C. in an endeavor to award just and reasonable compensation.

10. The appellant is directed to deposit the entire modified award amount along with interest and costs as per the order of this court, within four weeks form the date of the receipt of a copy of the order and on such deposit, the claimant is permitted to withdraw 50% of the award amount and the balance 50% of the award amount is directed to be deposited in an interest bearing fixed deposit in any one of the nationalized bank atleast for six years. For the enhanced amount the claimant is directed to pay required Court fee with the Registry of this Court within two weeks from the date of the receipt of the copy of the order. The first respondent is permitted to withdraw the interest once in every two months. The appeal is disposed of. No costs. Consequently the connected M.P.No.1 of 2010 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vk

To
The Motor Accidents Claims Tribunal, Principal Subordinate Court, Erode.

1 cc to Mr. N.Vijayaraghavan,Advocate, SR.No.27335
1 cc to Mr.A.Sivaji ,Advocate, SR.No.7190

C.M.A.No.1907 of 2010

kas(Co)pmk.13.4.2015