

In the High Court of Judicature at Madras

Dated :: 24.08.2015

Coram :

The Hon'ble Mr. Justice R. Sudhakar

Civil Miscellaneous Appeal
No. 350 of 2010

The Branch Manager
The National Insurance Company Ltd.,
Bhavani Main Road
Sankari
Salem District.

... Appellant/Respondent 2.

-vs-

1. Thiru. P. Manickam
S/o. Perumal
Mettu Kadai
Vellandi Valasu Village
Edappady Taluk
Salem District.

... 1st Respondent/Petitioner.

2. Thiru. T. Subramani
S/o. Thirumalai Gounder
Kattuvalavu
Veerappamapalayam Post
Edappady Taluk
Salem District.

... 2nd Respondents/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 23.06.2009 passed in M.C.O.P. No. 305 of 2005 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Sankari at Salem District.

For appellant : Mr.J. Chandran
For 1st respondent : M/s.S. Mukunth

J U D G E M E N T

The National Insurance Company is the appellant in the above appeal challenging the award and decree dated 23.06.2009 passed in M.C.O.P. No. 305 of 2005 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Sankari at Krishnagiri District.

2. It is a case of injury. The accident occurred on 13.03.2005. One Manickam, 1st respondent herein, is the claimant. According to him, on 13.03.2005, at about 06.30 a.m., he was riding his motor cycle TVS 50 bearing Registration No: TN 27 7413 on the left side of the road near Kamaraj statue for purchase. At that time, the 2nd respondent herein, drove the bus bearing Registration No: TN 27 R 9957 in a rash and negligent manner and dashed against the claimant. In the impact, the claimant was thrown away from his motorcycle and sustained fracture. He was given first aid at the Government Hospital, Edappady and later shifted to L.K.M. Hospital where he was treated for more than 50 days as in-patient. According to the claimant, he was aged 43 years at the time of accident and was earning a sum of more than Rs.5,000/- per month from his own tea stall and tea master. The claimant restricted his claim to a sum of Rs. 4,00,000/- as compensation from both the respondents before the Tribunal, the 1st respondent being the owner and the 2nd respondent being the insurer of the vehicle.

3. In support of the claim, the claimant had examined himself as P.W.1; one Periyathambi as P.W.2 and the Doctor as P.W.3 and marked Exs.P-1 to P-14, the details of which are as follows:-

Ex.P-1 is the copy of First Information Report
Ex.P-2 is the copy of the accident register
Ex.P-3 is the copy of the Disability Certificate
Ex.P-4 is the copy of the registration certificate of the bus
Ex.P-5 is the insurance policy of the bus
Ex.P-6 is the driving licence of the driver of the bus
Ex.P-7 is investigating report of the Motor Inspector
Ex.P-8 is the copy of the charge sheet
Ex.P-9 is the copy of the judgment
Ex.P-10 series are the prescriptions
Ex.P-11 series are the medical bills
Ex.P-12 is the x-ray
Ex.P-13 is the disability certificate
Ex.P-14 is the scan report

Neither any witness was examined nor any document was marked on the side of the respondents before the Tribunal.

4. The Tribunal considering the material documents and the fact that the driver of the bus had admitted his guilt and paid fine before the Judicial Magistre No: 2, Sankagiri, came to the conclusion that the accident had occurred due to the rash and negligent driving of the bus by its driver. By considering the evidence of P.W.3, the doctor, who examined the injured claimant, the Tribunal has come to conclusion that the claimant had suffered various injuries, in his right leg which has resulted in 40% disability. Considering all the factors,

the Tribunal had granted a sum of Rs.2,93,643/- as compensation under the following heads :-

1	Towards the loss of income - 6 months	Rs. 18,000/-
2	Towards pain & suffering	Rs. 15,000/-
3	Towards permanent disability	Rs. 1,87,200/-
4	Loss of comforts	Rs. 5,000/-
5	Towards Medical expenses	Rs. 58,443/-
6	Towards Transportation	Rs. 5,000/-
7	Towards nutritious food	Rs. 5,000/-
	Total	Rs.2,93,643/-

5. In appeal, the finding of negligence on the part of the driver of the bus, who is responsible for the accident and the injury suffered by the claimant and consequential liability fixed on the appellant insurance company to compensate the claimant is not seriously disputed by the learned counsel for the appellant and the same is confirmed. The learned counsel for the appellant contended that the compensation granted is on the higher side and the same is to be reduced.

6. On perusal of the records produced before it, it is seen that the claimant had examined P.W.2 - Periyathambi to support his claim that he was running a tea stall and a snacks shop and earning a sum of Rs. 9,000/- per month. P.W.2 is the person who was supplying milk to the claimant's tea stall. However, the Tribunal has only taken a sum of Rs. 3,000/- as the monthly income of the claimant. It is also on record that the permanent disability suffered by the claimant in the accident was 40%. To support this fact, the claimant had examined P.W.3 - the Doctor.

7. While going through the award of the Tribunal, this Court is not inclined to interfere with the quantum of compensation on the following reasons:-

- (i) The accident in this case happened on 13.4.2005. The injured claimant was 43 years old at the time of accident.
- (ii) The claimant is running a tea stall and snacks shop. Due to accident, he suffered multiple injuries to his leg and that he had undergone treatment as in-patient for more than 50 days. It is also on record that he continues to undergo treatment. The doctor who was examined as P.W.3 has stated that the claimant had suffered various injuries in his right leg and the claimant suffered permanent disability of 40%.

- (iii) No amount was granted towards attender charges and future medical expenses.
- (iv) The amounts granted under the heads pain and suffering, transportation and nutritious food are very low.
- (v) Considering all the above aspects, the total compensation granted by the Tribunal in a sum of Rs.2,93,643/- does not require any further reduction as also the interest granted by the Tribunal at 7.5%.

8. Finding no merit, this Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. The appellant is directed to deposit the entire award amount less the amount already deposited within two months. The claimant is permitted to withdraw the entire award amount with interest and cost. There shall be no order as to costs.

gp

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

The Presiding Officer
Motor Accidents Claims Tribunal
(Subordinate Judge)
Sankagiri
Salem District.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+ 1 cc to Mr.T.L.Thirumalaisamy, Advocate SR 44769

+ 1 cc to Mr.J.Chandra, Advocate SR 45615

rsi(co)
prk15/12

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