

In the High Court of Judicature at Madras

Dated :: 24.08.2015

Coram :

The Hon'ble Mr. Justice R. Sudhakar

Civil Miscellaneous Appeal
No. 3461 of 2008

New India Assurance Company Ltd.,
Kolar - 563 101. ... Appellant/Respondent II

-vs-

1. Thiru. Gulabjohn
S/o. Haji Abdul Wahab
No: 5/244 Anna Nagar
Kaveripatinam Post
Krishnagiri Taluk
Dharmapuri District. ... Respondent-I/Petitioner

2. R. Sakthivel
S/o. T. Ranganathan
No: 25 Theerthamandaba Street
Vridhachalam Taluk
South Arcot District. ... Respondent-II/Respondent I

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 23.01.2006 passed in M.C.O.P. No. 122 of 2003 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Krishnagiri at Dharmapuri District.

For appellant : Mr.J. Chandran

For 2nd respondent : M/s.A.S. Vijayaraghavan

1st Respondent : No Appearance

.. ..

J U D G E M E N T

The New India Assurance Company is the appellant in the above appeal challenging the award and decree dated 23.01.2006 passed in M.C.O.P. No. 122 of 2003 on the file of the Motor

Accidents Claims Tribunal (Subordinate Judge), Krishnagiri at Dharmapuri District.

2. It is a case of an injury. The accident occurred on 04.09.2002. One Gulabjohn, 1st respondent herein, is the claimant. According to him, on 04.09.2002, at about 10.30 hours, when he was proceeding in his bicycle in Kaveripatinam Town to Palacode Koot Road, on the extreme leftside of the road, a Yamaha motor cycle bearing Registration No: TN-31-Y-5492 belonging to the 1st respondent and insured with the 2nd respondent, being driven by its rider in a rash and negligent manner in an uncontrollable speed, hit behind him resulting in grievous injuries. According to the claimant, he was aged 50 years at the time of accident and was earning a sum of Rs.3,000/- per month from his own fruit shop. The claimant restricted his claim to a sum of Rs. 4,00,000/- as compensation from both the respondents, 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 and the Doctor as P.W.2 and marked Exs.P-1 to P-5, the details of which are as follows:-

Ex.P-1 is the copy of First Information Report
Ex.P-2 is the accident register
Ex.P-3 is the copy of the insurance policy
Ex.P-4 is the copy of the Disability Certificate
Ex.P-5 is the X-ray

On the side of the respondents, two witnesses were examined as R.Ws. 1 and 2 and five documents were marked as Ex.R.1 to R.5.

4. Before the Tribunal, the appellant filed counter statement contending that the accident had not occurred in the place and manner as claimed by the claimant and that the actual vehicle involved in the accident is a black colour Hero Hondo Motorcycle driven by one Govindan, a School Teacher, residing at Vallakullgs, Veliampatty. In support of its contention, the appellant had also filed Ex.R.4 - a letter written by one Mohamed Saleem. It is also contended by the appellant that the claimant is not fruit shop owner but a collie and his yearly income itself is only a sum of Rs.7,200/-. However, the Tribunal, rejected such contentions of the appellant on the ground that the appellant had not examined the author of Ex.R.4 and hence, reliance cannot be placed on that document.

5. The Tribunal considering the material documents and the evidence of P.W.2, the doctor, who examined the injured claimant, has come to conclusion that the claimant had suffered various injuries, including fracture in hip joint, in the accident. The doctor assessed that the claimant had suffered

permanent disability of 35%. Considering all the factors, the Tribunal had granted a sum of Rs.2,10,000/- as compensation under the following heads :-

Sl. No.	Head	Amount granted by the Tribunal
1	Towards the injuries suffered	Rs. 30,000/-
2	Towards pain & suffering	Rs. 40,000/-
3	Towards permanent disability	Rs. 40,000/-
4	Loss of future earning capacity	Rs. 10,000/-
5	Towards Medical expenses	Rs. 40,000/-
6	Future Medical expenses	Rs. 6,000/-
7	Attendant charges	Rs. 3,000/-
8	Damages to articles and cloth	Rs. 1,000/-
9	Towards nutritious food	Rs. 5,000/-
10	Towards transportation	Rs. 5,000/-
11	Towards loss of future income	Rs. 30,000/-
	Total	Rs.2,10,000/-

6. In appeal, the learned counsel for the appellant denies the involvement of the vehicle insured with it in the accident. He also pleaded that the compensation granted under the heads, namely, Rs.30,000/- granted towards loss of future income; Rs.10,000/- granted towards loss of future earning capacity and Rs.30,000/- towards injuries suffered over and above the amount granted towards disability at Rs.40,000/- is not justified. Therefore, the quantum of compensation has to be reduced.

7. On perusal of the records produced before it, the Tribunal had rightly pointed out that the appellant had not examined the author of Ex.R.4 in support of its contention that the vehicle involved in the accident is only a black colour Hero Honda motorcycle. In the absence of any contra evidence, this Court also cannot disbelieve the evidence of the claimant that he was hit behind by the Yamaha Motorcycle bearing Registration No: TN-31 Y 5492, which is insured with the appellant herein.

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

- (i) The accident in this case happened on 4.9.2002. The injured claimant was 50 years old at the time of accident.

(ii) The claimant is running a fruit shop. Due to accident, he suffered multiple injuries which includes a fracture in hip joint and that he continues to undergo treatment. The doctor who was examined as P.W.2 has stated that the claimant's right leg had shortened by 5 cm and the claimant suffered permanent disability of 35%. Therefore, suitable compensation has to be given towards loss of income during the period of treatment and convalescence. No amount was granted under the head loss of income during the period of treatment and convalescence. Hence, the amount granted under the head loss of future earning capacity and loss of future income can be adjusted towards loss of income during the period of treatment and convalescence.

(iii) Meagre amount was granted towards attender charges, extra nutritious food, future medical expenses and transport expenses. The sum of Rs.30,000/- granted towards injuries, can be adjusted on the heads, (i.e.) attender charges, extra nutritious food, future medical expenses and transport expenses for which meagre amount has been granted.

(iv) Considering all the above aspects, the total compensation granted by the Tribunal in a sum of Rs.2,10,000/- does not require any further reduction as also the interest granted by the Tribunal at 9% as the accident in this case happened in the year 2002 and the award was passed in the year 2006.

9. Finding no merit, this Civil Miscellaneous Appeal is dismissed. It is stated that entire award amount has been deposited. The first respondent/claimant is permitted to withdraw the entire award amount. There shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

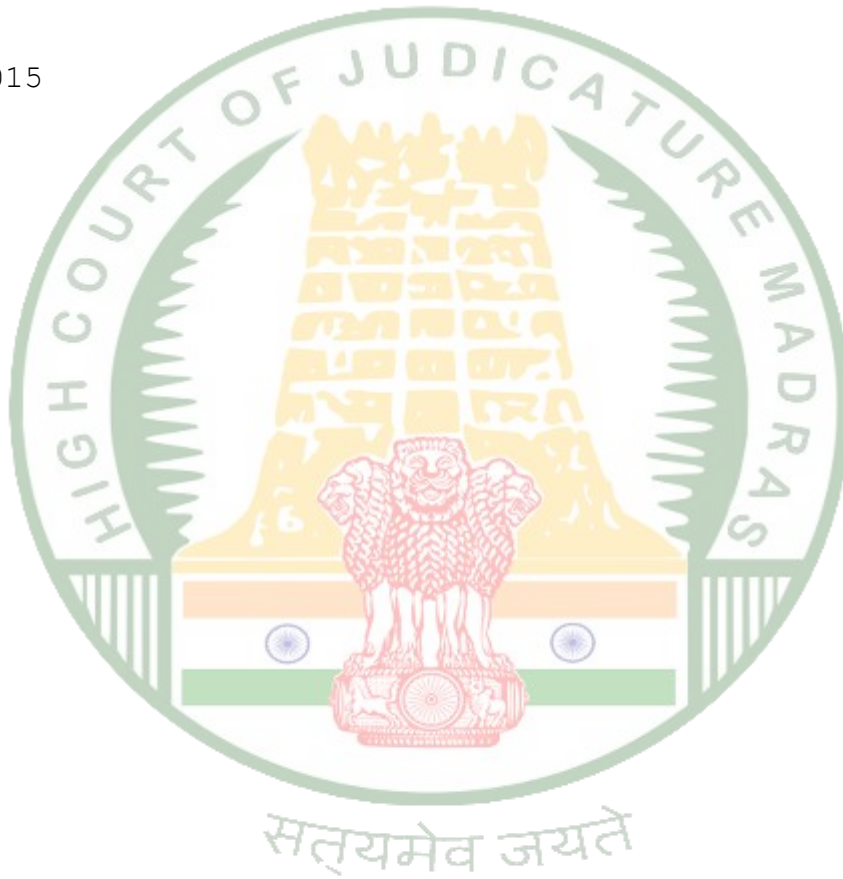
1.Motor Accidents Claims Tribunal
Subordinate Judge, Krishnagiri at
Dharmapuri District.

2.The Record keeper, VR Section,
HighCourt, Madras-104

+1 cc to M/s.J.Chandran Advocate sr.45646
+1 cc to M/s.A.S.Vijayaraghavan Advocate sr.44998

C.M.A. No: 3461 of 2008

rsk(co)
aa15/10/2015



WEB COPY