

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

CORAM :

THE HON'BLE MR. JUSTICE R. SUDHAKAR

Civil Miscellaneous Appeal
No. 358 of 2006

United India Insurance Company Ltd.,
ArakkonnamAppellant/3rd Respondent

-vs-

1. D. Murugesan
S/o. Duraisamy Gounder
No: 7/110 B Kollaimeedu
Kattaka Nallur Village
Arani Taluk.1st Respondent/Petitioner
2. M. Sabestein
S/o. Marria Susai2nd Respondent/1st Respondent
3. S. Victor
S/o. Sebastein

Both residing at
No: 37 Latchi Iyyanar Koil Street
Ashok Nagar,
Arakkonnam.3rd Respondent/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988 against the judgment and decree dated
30.01.2004 passed in M.C.O.P. No.233 of 2001 on the file of the
Motor Accidents Claims Tribunal (Subordinate Judge), Cheyyar.

For appellant : Mr. J. Chandran
For 1st respondent : Mr. R. Margabandu
2nd respondent : Given up

J U D G E M E N T

The United India Insurance Company Ltd. is the appellant in the above appeal challenging the award and decree dated 30.01.2004 passed in M.C.O.P. No. 233 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Cheyyar.

2. It is a case of injury. The accident in this case happened on 12.3.2001. According to the injured claimant Murugesan, on 12.03.2001, at about 11.00 a.m., when he was coming near Palace Kalyana Mahal in the Officer's Line in Vellore, the motor cycle bearing Registration No: TN-23-V 3420, belonging to the 2nd respondent herein and being driven by the 3rd respondent herein in a rash and negligent manner, which was coming behind the claimant, hit the claimant from behind. The claimant fell down and suffered multiple injuries all over his body including a fracture on his left shoulder and dislocation on the left shoulder joint. The injured claimant, after being given first aid at Mummi Hospital, was later taken to Government Pentland Hospital, Vellore, where she has undertaken treatment as in-patient. Thereafter, the injured had taken treatment at Arun Hospital, Vellore. According to the claimant, the accident had left him with permanent disability and hence, he claimed a sum of Rs. 2,00,000/- as compensation from both the respondents, the 2nd respondent being the owner of the two wheeler and the 3rd respondent being the driver of the two wheeler and the appellant, being the insurer of the said vehicle.

3. In support of the claim, the injured claimant had examined himself as P.W.1 and the Doctor as P.W.2. Exs.P-1 to P-6 were marked, the details of which are as follows:-

Ex.P-1 is the copy of FIR

Ex.P-2 is the accident register

Exs.P-3 & 4 are the copies of prescription and the medical bill

Ex.P-5 is the disability certificate

Ex.P-6 is the x-ray

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

4. After discussing the oral and documentary evidence on record, the Tribunal had fixed the monthly income of the claimant at Rs. 2,500/- and had granted a sum of Rs.1,35,000/- towards pecuniary loss caused due to the permanent disability

caused in the accident namely 30%. The Tribunal had also granted a sum of Rs.5,000/- towards Pain and suffering and a sum of Rs. 10,000/- towards loss of income for four months. In all, the Tribunal granted the following amounts as compensation with 9% interest from the date of petition till the date of judgment and thereafter at 6% interest till the date of payment, as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1	Towards pecuniary loss - due to permanent disability at 30%	Rs. 1,35,000/-
2	Towards Pain & Suffering	Rs. 5,000/-
3	Towards loss of income - 4 months	Rs. 10,000/-
	Total	Rs. 1,50,000/-

5. The finding of negligence on the part of the driver of the two wheeler, 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 in this appeal and the same is confirmed. The appeal is filed challenging the quantum of compensation.

6. Though the appellant does not dispute the very accident and the consequential claim, the Tribunal had rightly pointed out that the owner of the offending vehicle did not appear and was set exparte and hence, in the absence of any other material, the contention of the claimant that the accident occurred due to the negligence of the offending vehicle deserves to be admitted.

7. Now coming to the amount of compensation awarded, a bare reading of the claim petition shows that the claimant had suffered grievous injuries namely fracture in the right shoulder and fracture in the right leg. In support of his claim that the injured had suffered fractures, the Doctor, was also examined as P.W.2. The Doctor had deposed that there was malunion, which resulted in 30% disability. It is stated that the claimant is unable to lift his hands above his head; that he cannot lift any weight and cannot do any hard work in future. Before the Tribunal though the claimant contended that he was earning a sum

of Rs.4,000/- per month, the Tribunal had fixed his income at a sum of Rs.2,500/- only per month and arrived at a sum of Rs.1,35,000/- towards compensation [Rs.30,000/- x 15 x 30%]. Other than this, the Tribunal had just granted a sum of Rs.5,000/- towards pain and suffering and a sum of Rs.10,000/- towards loss of income for a period of four months.

8. Considering all the aforesaid factors, this Court is of the view that the award passed by the Tribunal is just compensation and does not require any reduction or modification and accordingly, it is confirmed. There is no dispute with regard to interest granted by the Tribunal and the same is confirmed.

9. Finding no merits, this Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. By order dated 25.1.2006, the appellant was directed to deposit entire award amount. The claimant was permitted to withdraw 50% of the award amount with accrued interest. Hence, the claimant is permitted to withdraw the balance award amount with interest and cost. Connected miscellaneous petition is closed. There shall be no orders as to the costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gp

To

The Motor Accidents Claims Tribunal
Subordinate Judge, Cheyyar,
Tiruvannamalai District.

Copy to

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

1 CC to Mr.J.Chandran, Advocate SR.No. 45645

C.M.A. No: 358 of 2006

BVR (CO)

PSI (04.11.2015)