

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.10.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2211 of 2016 &
C.M.P.No.15746 of 2016

Bharati AXA General Insurance Company Ltd.,
Divya Trade Centre,
1st Floor, No.II, Brindavan Road,
Fairlands, Salem-636 016. .. Appellant/ 2nd Respondent

Versus

1.Anthonysamy ...1st Respondent/ Petitioner

2.Ponnusamy ...2nd Respondents/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order and decretal order dated 29.04.2016 made in M.C.O.P.No.1116 of 2012 on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Judge I), Salem.

For appellant : Mr.Srinivasan Ramalingam

J U D G M E N T

The Bharati AXA General Insurance Company Ltd., has filed the present Civil Miscellaneous Appeal, challenging the correctness of the impugned award dated 29.04.2016 made in M.C.O.P.No.1116 of 2012 on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Judge I), Salem.

2.It is the case of the claimant that on 18.03.2012 at about 12.30 p.m. when the claimant was riding the TVS Super XL motor cycle bearing Registration No. TN 37 BA 2155 proceeding from Chinnakavoor to Thermal Main Road Junction at near Chinnakavoor Burial Ground, the offending vehicle belonging to the second respondent bearing Registration No.TN 52 X 6937, driven by its driver in a rash and negligent manner, came from opposite side and dashed against the claimant/1st respondent herein. Due to the said impact, the claimant/1st respondent sustained grievous injuries all over the body.

3.Learned counsel appearing for the appellant would submit that there is no sufficient finding recorded by the Tribunal on the head 'loss of income' for 8 months. It is not open to the Tribunal to conclude in favour of the injured/claimant as there was loss of income for a period of eight months. More over, the injured/claimant himself has deposed in his evidence that he had not worked for six months. In support of his submission, a copy of the proof affidavit produced before the Court wherein para-6 would also show that he has not attended his contract work for the period of six months based on the advice of doctor who stated that for immediate and quick restoration for fracture and injuries sustained by him., The proof affidavit would clearly show that due to injuries sustained, he suffered loss of income for more than Rs.1 lakh. But the Tribunal had awarded only a sum of Rs.52,000/- under the head 'loss of income' for a period of eight months. the learned Tribunal has wrongly awarded a sum of Rs.52,000/- towards loss of income without noticing the actual nature of injuries and there is no corroborate evidence in this respect. He would further submit that a sum of Rs.50,000/- awarded towards loss of amenities, a sum of Rs.50,000/- towards pain and suffering and a sum of Rs.1,23,000/- towards disability, are excessive, erroneous and disproportionate, which need interference. He would further submit that as the claimant has sustained injuries viz., fracture of 5th metacarpal bone in the right little finger and tenderness with degloving injury on his right knee, he is not entitled to get the exorbitant amount awarded under the said various heads, which has inflated the total compensation. Therefore, the impugned award passed by the learned Tribunal is liable to be interfered with, he pleaded.

4.But this Court is not able to find any merit in his submissions. Due to the accident, the claimant was given first-aid in the Government Hospital, Mettur and thereafter, shifted to Kurinji Hospital, Salem and admitted as inpatient from 18.03.2012 to 22.03.2012. More over, the claimant/1st respondent himself deposed in his evidence that he had not done his contract work for six months. In support of his submission, he has also produced a copy of the proof affidavit which would clearly show that he has not attended the contract work for a period of six months, based on the advice of Doctor/PW2, for quick and immediate restoration of the fracture and injuries sustained by him. As a result, the proof affidavit clearly shows that he suffered loss of income of Rs.1 lakh. But the Tribunal has awarded a sum of Rs.52,000/- only under the head 'loss of income' for a period of eight months. Therefore, this Court is not able to find any substance on the argument. While going to another head, 'loss of amenities and enjoyment of life', it has been seen that the injured /claimant immediately after taking first aid in the Government Hospital, Mettur, for better treatment, he was shifted to Kurinji Hospital, Salem and

admitted as inpatient from 18.03.2012 to 22.03.2012 and he has undergone operation in his right little finger and he has also sustained fracture in right knee (petella bone). However, the injured/claimant has not proved that he is working as Civil Contractor. Considering the injuries sustained by the claimant, the Tribunal has awarded a sum of Rs.50,000/- towards loss of amenities and enjoyment of life, which cannot be said to be an exorbitant one and the same is hereby confirmed. This Court, finding that the compensation awarded under various other heads, being reasonable, is not inclined to interfere with the impugned award. Accordingly, the award is confirmed and the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

5.The appellant / Insurance Company is directed to deposit the entire award amount, less the amount already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the 1st respondent/claimant to move a petition before the Tribunal for withdrawing the said amount.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

The Motor Accidents Claims Tribunal,
(Special Subordinate Judge I), Salem.

1 cc to M/s. Srinivasa Raghavan, Advocate, Sr. 59054
1 cc to Mr.S.P. Yuvaraj, Advocate, Sr. 59242

C.M.A. No.2211 of 2016

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