

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.06.2016

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THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.1977 of 2008
and
M.P.No.1 of 2010

M/s.Royal Sundaram Alliance
Insurance Co.Ltd.,
3, Khader Nawas Khan Road,
II Floor, Chennai - 6. ...Appellant/2nd respondent

...vs...

1.Venkatachalan
2.Karuppusamy
(Exparte in the Lower Court)

.. Respondents/Petitioner/
1st Respondent

Prayer: Civil Miscellaneous Appeal is filed against the judgment and decree dated 23.04.2008 made in M.C.O.P.No.913 of 2004 on the file of the Motor Accident Claims Tribunal [(Additional District Judge) FTC No.IV)], Coimbatore at Tiruppur.

For Appellant :M/s.R.Sree Vidhya
For R1 :Mr.MA.P.Thangavel

JUDGMENT

Questioning the negligence as well as the quantum of compensation awarded by the Tribunal in the claim petition in M.C.O.P.No.913 of 2004, the appellant/Insurance Company stands before this Court with this appeal.

2. The first respondent, claiming totally a sum of Rs.5,00,000/- towards the compensation for the injuries sustained by him in a road traffic accident, said to have been taken place on 27.12.2003, had moved the claims Tribunal with a claim petition in MCOP.No.913 of 2004. The second respondent being the owner of the vehicle had not chosen to contest the claim as he remained exparte before the Tribunal. The appellant/Insurance Company had alone contested the claim by filing their counter affidavit. The Motor Accident Claims

Tribunal, on verifying the evidences both oral and documentary, had proceeded to award a sum of Rs.3,79,830/- directing the appellant/Insurance Company to pay this amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization.

3. M/s.R.Sreevidhya, learned counsel for the appellant has contended that the claimant had not placed any acceptable evidence to substantiate his case that he was neither guilty of negligence nor guilty of contributory negligence to the occurrence. Secondly, she would contend that there was a head on collision and on account of this reason, the front portion of the two wheeler driven by the first respondent/claimant was completely damaged. Thirdly, she would submit that the Tribunal in order to arrive at the quantum went wrong in adopting the multiplier method.

4. On the other hand Mr.Ma.P.Thangavel, learned counsel for the first respondent/claimant would submit that the award passed by the Tribunal to the extent of Rs.3,79,830/- was very lesser than the actual claim of Rs.5,00,000/- and hence he has urged to enhance the claim. It is pertinent to note here that the first respondent/claimant has neither filed any cross objection, challenging the award passed by the Tribunal nor filed any appeal for enhancement of compensation. Under these circumstances, the arguments advanced by Mr.Ma.P.Thangavel, learned counsel for the appellant is not able to be countenanced.

5. This Court has perused the award passed by the Tribunal. The Claims Tribunal has found that at the time of the accident, the petitioner was aged about 27 years. The Tribunal has also found that the first respondent/claimant was earning a sum of Rs.3,000/- per mensem, as he was working as a Supervisor in Gokul Tailoring Shop. It is also to be noted that the Tribunal had adopted the multiplier system in arriving at the quantum of compensation. It is also to be noted that as it reveals from the award, the first respondent/claimant had sustained the following injuries.

- 1)Subarachnoid haemorrhage with fracture at frontal bone in midline and on the left side;
- 2)Fracture at right temporal bone, facimaxillary injury
- 3)Fracture at right zygoma maxillary complex
- 4)Fracture at left naeal bone
- 5)Laceration over right forehead measuring 3X2 cm.
- 6)Lacerated wound over the upper lip
- 7)Abrasion over right lower abdomen.

6. Based on the evidence given by P.W.2 Doctor, Senthilkumar, the Tribunal had assessed the disability at 33%. Since the petitioner was aged about 27 years, the multiplier of

18 was selected and after calculating his monthly income at Rs.3000/-, the loss of earning capacity to the extent of 33% of the disability was calculated at Rs.2,13,840/- . As per the medical bills and vouchers (Ex.A4 series), the Tribunal had awarded a sum of Rs.1,16,490/- towards medical expenses. Under the head of "pain and suffering", the Tribunal had awarded a sum of Rs.20,000/-. Towards the loss of amenities, the Tribunal awarded a sum of Rs.20,000/- and another amount of Rs.5,000/- was awarded towards extra nourishment. The Tribunal has also awarded the compensation under the following heads:-

Loss of earning capacity to the extent of 33%	2,13,840/-
Pain and suffering	20,000/-
Loss of amenities	20,000/-
Loss of amenities due to reduce their incisor distance	5,000/-
Extra nourishment	1,500/-
Transport Expenses	3,000/-
Loss of income and medical expenses rounded to	1,16,490/-
Total	3,79,830/-

7. This Court, after considering the award passed by the Tribunal, has found that, it does not require the interference of this Court to exercise its appellate jurisdiction, either to modify or to set aside the award.

8. Under these circumstances, this appeal is dismissed and the award passed by the Tribunal is confirmed. The appellant/Insurance Company is directed to deposit the award amount along with accrued interest and cost within a period of four weeks if not deposited earlier. On such deposit being made, the first respondent is entitled to withdraw the entire award amount along with accrued interest and cost, if not withdrawn earlier, without filing any formal application, seeking permission. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Additional District Judge,
Fast Track -IV, Coimbatore at Tiruppur.

+ 1 cc to Mrs.R. Sreevidhya, Advocate Sr.30692
+ 1 cc to Mr.Ma.P.Thangavel, Advocate Sr.30443

C.M.A.No.1977 of 2008
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M.P.No.1 of 2010

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