

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 18.11.2016

Judgment Pronounced on: 21.12.2016

CORAM :

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.392 of 2009

and

MP.No.1 of 2009

The Branch Manager,
United India Insurance Co. Ltd.
Salem-1.

... Appellant

Vs.

1.Anbalagan

2.R.Premanand Prasad

... Respondents

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree dated 08.11.2006 in MCOP.No.316 of 2004, on the file of the Motor Accident Claims Tribunal (Additional District Judge), Dharmapuri.

For Appellant : Mr.T.Ravichandran

For Respondents : Mr.M.Selvam [for R1]
R2 - No appearance

JUDGMENT

The insurance company which is arrayed as the second respondent in M.C.O.P. No.316 of 2004 on the file of the Motor Accidents Claims Tribunal, (Subordinate Judge), Dharmapuri, is the appellant before this Court. It challenges the quantum of compensation awarded to the first respondent/claimant who suffered injury in a road accident.

2. In an accident that took place on 22.04.2002 at about 10.15 a.m., the goods vehicle in which the claimant was travelling along Krishnagiri - Thiruvannamalai Main Road, capsized, resulting in the claimant suffering injuries,

prominent among them being fracture of metacarpal bones of his right wrist. For the injuries he suffered and for the medical treatment he underwent plus on heads of other general or conventional damages the first respondent/claimant made a claim of Rs.7,00,000/-. However, the Tribunal determined the compensation awardable at Rs.2,97,041/-, out of which, it has fixed Rs.1,53,000/- towards loss of earning power. In arriving at the loss of earning power, the Tribunal has considered Ex.P11 disability certificate wherein P.W.2 Doctor has assessed the claimant's disability at 25%.

3.Learned counsel for the appellant submitted that the Tribunal appears to have treated the claimant as permanently disabled and that he lost all prospects of doing any work and has adopted a multiplier at 17, which is on the higher side. This perception of the Tribunal has resulted in over valuing the injury of the claimant and its consequence.

4.Was the award erroneous for over compensating the claimant on the head of permanent disability is the solitary point to be considered. The Tribunal in its award has first held that contrary to the statement in the claim petition that the claimant was a loadman, claimant was a cleaner of the goods vehicle and to support its conclusion the Tribunal has relied on Ext.P-1 FIR where the claimant's avocation was stated to be a cleaner. This part of the finding of the Tribunal was not challenged by the insurance company now. On the footing that the claimant was a cleaner, the Tribunal notionally fixed his monthly income at Rs.3,000/-. As to the extent of disability it relied on Ext.P-11, the disability certificate of the physician as well his oral testimony before it that he tendered as P.W.2 to hold that the claimant had suffered 25% permanent disability and applied 17 as the multiplier to arrive its compensation for loss of future earning capacity at Rs.1,53,000/-.

5. P.W.2 in his evidence has testified that the claimant had suffered fracture of four metacarpal bones of his right wrist, that they have malunited and that owing to his disability the claimant cannot lift any heavy objects and might not undertake hard labour. Ext.P-3, the discharge summary issued by St. John's Medical College Hospital where the claimant was admitted immediately after the accident, it is stated that the claimant was said to have suffered crush-injury of his right hand. Therefore, it is not too difficult to visualise that the claimant had not suffered any stress-fracture but had badly crushed his right wrist. And, he was barely 22 years at the relevant time. While he might not have suffered a total loss of his career prospects, his choices certainly would have been restricted by the nature of injury he has suffered. Viewed thus, I do not consider that the Tribunal had been too

charitable to the claimant and fixed an unfair or unjust compensation.

6. To conclude I find no merit in the appeal and the same is dismissed. The appellant, however, is directed to deposit any amount that still remains to be deposited with interest at 7.5% p.a within six weeks from the date of receipt of the order copy upon which the claimant will be at liberty to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vga/ds

To:

1.The Motor Accident Claims Tribunal,
(Additional District Judge),
Dharamapuri.

2.The Record Keeper,
V.R.Section,
High Court, Madras.

+lcc to Mr.M.Selvam, Advocate, S.R.No.74610

+lcc to Mr.T.Ravichandran, Advocate, S.R.No.74835

C.M.A.No.392 of 2009

SSK(CO)
EU(07/03/2017)

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