

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-04-2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1591 of 2006

United India Insurance Co. Ltd.,
Royapetta Town,
North Arcot District.

... Appellant/R2

Vs

1.R.Rajendran

... R1/Petitioner

2.M.Nazar
(2nd respondent exparte before lower court)

... R2/R1

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.88 of 2000 dated 05.11.2004 on the file of the Motor Accident Claims Tribunal, Sub Court, Cheyyar, Thiruvannamalai District.

For Appellant : Mr.M.B.Gopalan

For R-1 : No appearance

For R-2 : Exparte

J U D G M E N T

This appeal arises out of the judgment and decree in M.C.O.P.No.88 of 2000 dated 05.11.2004 on the file of the Motor Accident Claims Tribunal, Sub Court, Cheyyar, Thiruvannamalai District.

2. The appellant herein is the 2nd respondent, the first respondent is the claimant and the second respondent is the 1st respondent before the Tribunal in M.C.O.P.No.88 of 2000.

3. The first respondent/claimant filed claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.06.1997.

4. According to the first respondent, on 12.06.1997, while he was proceeding to Bangalore in an Ambassador Car bearing Regn.No.TN 37 Z 0843 to alongwith his Father, Brother Sivakumar, Sister's husband Elumalai, Velu - brother of Elumali and Kotti, near Chittoor, a lorry bearing Regn.No.ABC 6211 came in a rash and negligent manner and dashed against the car. Due to the said accident, all the passengers in the car died except the first respondent/claimant who sustained fracture in his right hand shoulder and multiple injuries all over the body. Subsequently, he was admitted in Government Hospital, Chittoor and was taking treatment as inpatient. He further took treatment as outpatient for a period of one year. Further, due to the fracture, he is unable to lift any heavy things using his left hand was unable to do his work as done earlier. Thus, claiming compensation, the first respondent alongwith legal heirs of the deceased passengers, filed claim petition before the tribunal.

5. The second respondent remained ex parte before the Tribunal. The appellant herein filed counter denying all the averments made by the first respondent/claimant. It is further denied that the person who drove the vehicle was driving under the course of employment or that he had necessary licence or that the vehicle had the permit to ply. It is also stated that the respondent's liability as insurer is only limited subject to the terms and conditions of the contract which has to be proved by the claimant and hence, the appellant, as insurer of the lorry is not liable to pay any compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, the first respondent examined himself as P.W.1. Twenty-Seven (27) documents were marked as Exs.P1 to P27 on the side of the respondent/claimant. On the side of the appellant, no one was examined and no documents were marked.

7. The Tribunal framed necessary points for consideration. On considering the pleadings, oral and documentary evidence, the Tribunal came to a conclusion that the accident took place only due to the rash and negligent driving of the driver of the lorry and passed a common order, fixing liability upon the appellant, as insurer of the lorry and directed them to pay the compensation. The tribunal, considering the nature of injuries sustained by the first respondent awarded a sum of Rs.2,31,800/- as compensation payable to the first respondent. Against the said order, the appellant insurance company has preferred the present appeal.

8. The learned counsel for the appellant would submit that the Tribunal erred in adopting multiplier method for 42%

disability sustained by the first respondent/claimant and awarded a sum of Rs.2,26,800/- towards loss of income which is unsustainable and hence the same has to be modified. It is not the case of the first respondent that he was totally disabled from doing any work and there is total loss of earning capacity.

9. I have heard the rival submissions and perused the materials available on record.

10. As rightly contended by the learned counsel for the appellant, adopting of multiplier method for 42% partial disability is unsustainable and hence the same is set aside. However, the first respondent is entitled to a sum of Rs.1,000/- per percentage of disability, taking into consideration 42% permanent disability suffered by him. Accordingly, a sum of Rs.42,000/- is awarded to the claimant towards permanent disability. The Tribunal has not awarded any amount towards attender charges though the claimant was taken treatment in hospital for one month. Therefore, a sum of Rs.5,000/- is awarded towards attender charges. A perusal of the evidence of PW6-doctor and Ex.P21 - disability certificate, would show that the claimant could not lift any heavy things using his right hand. Hence, a sum of Rs.50,000/- is awarded towards loss of earning capacity. In all other aspects, the award of the tribunal is confirmed. Thus, the award of the tribunal is modified to Rs.1,02,000/-, break-up as follows -

Srl.No	Particulars	Amt. Awarded by the Tribunal - Rs.	Amt. modified by this Court - Rs.
1	Disability	2,26,800/-	42,000/-
2	Pain & Sufferings	5,000/-	5,000/-
3	Loss of earning capacity	-	50,000/-
4	Attender charges	-	5,000/-
	Total	2,31,800/-	1,02,000/-

The rate of interest awarded by the tribunal @ 9% from the date of petition till the date of deposit remains unaltered.

11. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

12. It is represented by the learned counsel for the appellant that as per the direction of this Court, the appellant had already deposited the entire amount awarded by

the Tribunal alongwith interest and costs. Hence, the first respondent/claimant is permitted to withdraw the modified award amount alongwith interest and costs, less the amount already withdrawn, if any. The appellant/insurance company is permitted to withdraw the excess amount alongwith interest and costs, available in the deposit.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rgr

To

The Subordinate Judge,
Motor Accident Claim Tribunal,
Cheyyar, Thiruvannamalai District.

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.20877

C.M.A.No.1591 of 2006

EV(CO)
CA(02/05/2017)



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