

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 22.11.2016

Judgment Pronounced on : 30.06.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2373 of 2009
and MP.No.1 of 2009

The Manger,
United India Insurance Co.,
Nehruji Road, Villupuram ... Appellant/2nd Respondent

Vs.
1.Janakirama Reddiar ...1st Respondent/Petitioner
2.S.Devanathan
(R2 set exparte before the Tribunal)
...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 27.01.2003 made in MACTOP.No.228 of 2002 passed by the Fast Track Judge No.I (OP.No.508 of 1994 on the file of the Sub Judge, Tindivanam) Motor Accident Claims Tribunal, Tindivanam.

For Appellant : Mr.K.Padmanabhan
For M.J.Vijayraghavan
For R1 : Mr.A.K.Kumarasamy

JUDGMENT

In this appeal the appellant Insurance Company challenges the quantum of compensation paid to the claimant for the injuries that the latter had suffered following the negligent driving of a bus insured by it when the bus dashed against the claimant while he was walking along the road. The accident took place on 15-11-1993.

2. The nature of injury suffered by the claimant was a fracture to his pelvic bone, that he initially took treatment at M/s.Ashoka Nursing Home, Puducherry and then was shifted to M/s Apollo Hospital, Chennai. He was an agriculturist and was proved to have agricultural lands of his own. On his claim of Rs. 4.0 lakhs, the Tribunal has awarded Rs.2,75,400/- and directed both the owner and his insurer, the appellant herein to pay the same with interest at 9% interest per annum. The major component of the award amount was the compensation amount of Rs.88,600/- awarded on the head of loss of earning capacity. The appellant challenges essentially this component of the sum awarded.

3. The learned counsel for the appellant contended that while the claimant himself has claimed only Rs.2,000/- p.m. as the monthly income, the Tribunal has fixed the same at Rs.3,000/- and determined the compensation payable for loss of earning capacity as the product of $3,000 \times 12 \times 8 \times 31\%$. Of this, 8 represents the multiplier and 31 represents the percentage of disability assessed by the doctor.

4. First, the Tribunal has committed an arithmetical error: Product of $3,000 \times 12 \times 8 \times 31\%$ is Rs.89,280/-, whereas the Tribunal has arrived at a sum of Rs.88,660/-. Turning to the merit of the contention of the appellant, it is not unlawful for the Tribunal to fix a higher sum than what the claimant claims as his income, if only there are material available on record to sustain it. The Tribunal, after all is required to determine a just and fair compensation and necessarily it cannot be pinned down to the sum that the claimant considers as his worth, more so, in cases of those who are in unorganized sector. So far the evidentiary material is concerned, the Tribunal has considered Ext.P-16 Adangal to hold that the claimant was possessed of agricultural lands and this has weighed with it in fixing the notional monthly income at Rs.3,000/-. This Court finds no flaw in the same.

5. In the result, this appeal is found to be devoid of merits and the same is dismissed with a direction to the appellant to deposit the compensation amount with interest at 9% per annum, less if any already deposited, before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, and on such deposit, claimant is entitled to withdraw it forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To:

1.The Fast Track Judge, No.1,Subordinate Judge,
Motor Accident Claims Tribunal, Tindavanam,

2.The Section Officer,VR Section,
High Court, Madras-104.

+1cc to M/s.M.J.Vijayaraghavan,Advocate sr.68428

CMA.No.2373 of 2009

rsk(co)

ss(7/9/2017)

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