

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A. No.1226 of 2005

United India Insurance Company Ltd,
Dr.Nanjappa Road,
Coimbatore - 18.

.. Appellant/3rd Respondent
1st Respondent/Claimant

Versus

1.Sivakumar
2.Thilagavathi
3.Karunakaran

.. Respondents 2 & 3/Respondents 2 & 1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 16.02.2004 made in MCOP.No.836/01 on the file of the Motor Accident Claims Tribunal and Additional District Judge (FTC-1) (MCOP No.903/01 Sub-Court) Coimbatore.

For Appellant : Mr.T.Ravichandran

For Respondents : No Appearance for R1
R2 - Ex Parte

J U D G M E N T

The civil miscellaneous appeal has been preferred against the award and decree passed in MCOP.No.836/01.

2.The brief facts in the claim application are as follows:-

i)On 07.09.1999, the petitioner along with his relatives were travelling in the Maruthi Van bearing Registration No.TMD 4077 and while he was nearing Sathy to Coimbatore main road, at that time, at about 12.15 hours, the driver/first respondent drove said vehicle in a rash and negligent manner and dashed against the tamarind tree, due to which the petitioner and the other persons travelled in the said Maruthi Van were sustained severe injuries and immediately they were taken for treatment to Coimbatore Medical Hospital and subsequently to Ganga Hospital for further treatment. The petitioner sustained severe injuries and he claimed a sum of Rs.5 lakhs as compensation under the heads of loss of income, disability, pain and sufferings and medical expenses.

3.The Insurance company filed the counter statement before the Tribunal and stated that it is for the petitioner to prove that the first respondent driver has caused the accident, due to his rash and negligence driving and also denied his employment and monthly salary of the petitioner. Overall the claim made by the petitioner was denied and stated as excessive. The Tribunal after assessing the evidence and documents has concluded that the accident had occurred due to the rash and negligent driving on the part of the first respondent/driver and by considering the medical certificates, the disability and the medical expenses incurred by the petitioner, has awarded a sum of Rs.2.70 lakhs as compensation at 9% interest.

4.Aggrieved by the said award, the appellant insurance company has preferred this appeal to set aside the same on the following grounds:-

i)The grievance raised by the appellant is that one Jagatheesan complainant was not examined to prove the accident and it is also stated that against the permit capacity, more than four persons had travelled in the said vehicle and there is a breach of policy conditions, since the claimant had travelled in the vehicle bearing Registration No.TMD 4077 as a passenger. It is clear that the owner has contrary to the condition stipulated in the policy, he has travelled in the said vehicle.

ii)The sum awarded under medical expenses is also unreliable without any receipts, the sum awarded under loss of earning by applying multiplier method is also not justified.

5.The appellant insurance company has also argued on the point of quantum that the Tribunal has awarded excessive amount under the various heads.

6.The main argument advanced by the appellant is that the multiplier method adopted by the Tribunal for assessing the loss of income by taking monthly income of the claimant at Rs.2,250/- and determined the amount at Rs.1,35,000/- is not justified and the same is excessive. This Court also inclined to modify the same.

7. On perusal of the awarded passed by the tribunal, it is seen that though the Tribunal has relied upon the evidence of P.W.2 to determine the salary of the claimant and calculated the loss of earning by applying the multiplier method, this Court is of the view that the said amount can be modified by fixing

Rs.2,000/- per percentage, for the 34% disability, in view of the injuries sustained by the claimant. Accordingly, the sum under the head "loss of earning is modified to Rs.68,000/-. Since the sum awarded under the head "pain and sufferings" and "medical expenses" are found reasonable and proper, the same is awarded without any modification.

8. Accordingly, the sum awarded by the Tribunal is modified by this Court as follows:-

Heads	Amount Awarded by Tribunal (Rs.)	Amount Modified by this Court (Rs.)
Medical Expenses	1,25,000/-	1,25,000/-
Pain and Sufferings	10,000/-	10,000/-
Loss of Earning	1,35,000/-	68,000/-
Total	2,70,000/-	2,03,000/-

9. In view of the said modification, the civil miscellaneous appeal is partly allowed. No costs.

10. The appellants are directed to deposit the entire award amount, in respect of above Appeal as per the modified award passed by this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant bank account through RTGS within one week thereon. The enhanced amount shall carry the same rate of interest as awarded by the Tribunal.

Sd/- जयते

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

AT

To

1. The Additional District Judge (FTC-1)
Motor Accident Claims Tribunal,
Coimbatore.

Copy To

The Section Officer,
V.R. Section,
High Court,
Madras - 104.

+1cc to Mr.T.Ravichandran, Advocate SR.No.67554

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BS (CO)
GMY (18/11/2019)



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