

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2018

CORAM:

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.1974 of 2007

The New India Assurance Co. Ltd.,
No.1, Bharathi Road,
Arcot Woodlands Complex,
Cuddalore.

... Appellant/2nd Respondent

Versus

1.B.Thenmozhi ... 1st Respondent/Petitioner
2.M.Ramamorthy

... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.11.2005 made in M.C.O.P.No.611 of 2002 on the file of the Motor Accident Claims Tribunal, (Principal Sub Judge), Villupuram.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 23.11.2005 made in M.C.O.P.No.611 of 2002 on the file of the Motor Accident Claims Tribunal, (Principal Sub Judge), Villupuram.

2. The brief facts of the case are as follows :-

On 20.01.2002 at about 5.30 a.m., when the claimant was walking on the left side of Villupuram Trichy National Highway, a TVS-50 belonging to the first respondent bearing Registration No.TN-31-C-121, driven by its rider in a rash and negligent manner, hit against the claimant and caused severe injuries including fracture. The claimant has claimed a sum of Rs.2,50,000/- as compensation.

3. The Insurance Company, in the counter statement, has stated that it is the careless and negligence act of the

claimant, which resulted the accident and no way the first respondent is responsible for the said accident. The claim made by the claimant also denied by the Insurance Company as excessive and arbitrary.

4. The Tribunal, upon analyzing the evidence and documents placed before it, has given a finding that the first respondent/owner of the vehicle is responsible for the accident by his rash and negligent driving and directed that the first and the second respondent/insurer of the vehicle are jointly liable to pay the compensation.

5. While determining the compensation, the Tribunal, has analyzed the nature of injury, disability sustained by the claimant and the related aspects and awarded the compensation under the following heads :

Heads	Sum Awarded by the Tribunal (Rs.)
For loss of income (Rs.2000*12*16*50/100)	1,92,000.00
For Pain and Suffering	10,000.00
For Simple injuries	2,000.00
For Medical Expenses	18,680.00
Total Compensation	2,22,680.00

The loss of income has been calculated by fixing the monthly income at Rs.2,000/- per month and by applying multiplier method at 16 and by taking disability at 50%, the sum arrived at Rs.1,92,000/- Aggrieved against the said award, the appellant/Insurance Company has preferred this appeal.

6. The appellant has stated that P.W.2-Doctor had deposed that the claimant had suffered 50% disability. The other grievances raised by the appellant is that applying the multiplier method for calculating compensation and in the absence of proof of monthly income of the claimant, the Tribunal assessed his monthly income at Rs.2,000/- per month is also not proper. Hence, the total compensation arrived at Rs.2,22,680/- by the Tribunal, under the various heads, is excessive and not justified.

7. The learned counsel for the appellant is present and no representation on behalf of the respondent.

8. On the side of the appellant/Insurance Company, it is argued that as per Ex.A5-Wound Certificate, there are three injuries, which are grievous in nature and the treatment for the said injury was also given in Koti Hospital. Ex.A4 is the

Accident Register. It is argued by the appellant/Insurance Company that the disability assessed by P.W.2 at 50% is highly excessive, hence, the tribunal ought not to have considered Ex.A10-Disability Certificate, while determining the compensation. Further, it is argued that no document was filed to prove the income of the deceased, hence, the monthly income taken by the Tribunal at Rs.2,000/- and also applying multiplier method by taking multiplier is not proper.

9. On a perusal of records, it is seen that as per Ex.A5-Wound Certificate, the claimants sustained three grievous injuries in his left hand and right leg and also sustained fracture injuries, the said fact was revealed by Ex.A6-Medical certificate issued by the hospital. It is also seen that the claimant has incurred medical expenses, for which Ex.A7-Medical Bills was also filed by the claimant. In view of the two fracture injuries in both legs, the disability assessed by the Doctor at 50% has been properly considered by the Tribunal. In view of the above, this Court is of the opinion that the tribunal while determining the award of compensation has rightly considered the nature of injury, period of treatment, medical expenses incurred by the claimant and the loss of income. The compensation awarded by the tribunal is quite reasonable and not excessive.

10. As the findings given by the Tribunal are based on the evidence and documents, this Court finds that the order of the Tribunal is just and proper. No interference is called for in the order of the Court below. Hence, the order of the Tribunal is confirmed.

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

12. The appellant/Insurance Company is directed to deposit the award amount awarded by the Tribunal, 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's bank account through RTGS within one week thereon.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

lpp

To

1. Motor Accident Claims Tribunal,
(Principal Sub Judge), Villupuram.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.N.Vijayaraghavan, Advocate sr.72708

CMA.No.1974 of 2007

nr 01/10/2019



WEB COPY