

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1907 of 2006
and
CMP.No.8599 of 2006

The New India Assurance Company Limited
Villupuram.
....Appellant

..Vs..

1.Sakthivel
2.J.Velmurugan
....Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment in MCOP.No.230 of 2005, dated 20.07.2005 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, (Fast Track Court No.II), Cuddalore.

For Appellant : Mr.S.Ramalingam

For Respondents : Mr.R.Sathiya Kumar for R1
R2- Not ready

JUDGMENT

The appellant is the second respondent in MCOP.No.1700 of 2003, on the file of the Additional District Judge,, Motor Accidents Claims Tribunal, Cuddalore.

2. The first respondent/claimant filed the above said claim petition under Section 166 (1) of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 21.01.2003.

3. The brief case of the first respondent/claimant is as follows. On 21.01.2003, the first respondent/claimant was walking on the mud portion of the Vandipalayam Main Road, Cuddalore. At about 10.00 a.m., a speeding Hero Honda Splendor motorcycle bearing Registration No.TN-31-D-8397 belonging to the second respondent hit the first respondent/claimant as a result of which, he sustained injuries all over his body. He was

immediately rushed to Government Hospital at Cuddalore, where he was treated as an in patient for six days. According to the claimant, he was earning a sum of Rs.9,000/- per month and that on account of the accident, he could not do his routine work as before and therefore, the owner of the two wheeler as well as the Insurer of the two wheeler are jointly and severally liable to pay the compensation of Rs.5,00,000/- to him.

4. The learned Additional District Judge, Cuddalore, after analysing the evidence on record, awarded a compensation of Rs.1,91,000/- to the first respondent/claimant together with interest at the rate of 9% per annum from the date of petition till the date of deposit.

5. Aggrieved over the orders passed by the tribunal, the second respondent/Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Mr.S.Ramalingam, the learned counsel appearing for the appellant would contend that application of multiplier method is not warranted in the instant case, since the claimant is not suffering from any functional disability.

7. A perusal of the judgment dated 20.07.2005 passed by the Additional District Judge, (Fast Track Court No.II) Cuddalore shows that a sum of Rs.25,000/- is awarded for the partial permanent disability sustained by the first respondent/claimant. The trial Court has also applied multiplier method and awarded a sum of Rs.1,56,000/- for loss of earning capacity. In fact while adopting the multiplier method, the tribunal has not included the percentage of disability.

8. A perusal of the copy of Accident Register (Ex.P3) shows that the first respondent/claimant has sustained the following injuries:-

- 1) A lacerated injury over the middle of the abdomen 1 X 1/2 X 1/2 cm.
- 2) Abrasion over the right hip 1 X 1/2 cm
- 3) Abrasion over the left hip 2 X 1 cm.

In the opinion of the Doctor, the first injury sustained by the first respondent/claimant is grievous in nature while injuries 2 and 3 are simple in nature. Dr.Sivasubramanian (PW2) has assessed the partial permanent disability as 55% as evidenced by Ex.P6. Since (PW2) conceded that he has assessed the percentage of disability sustained by the first respondent/claimant approximately, the tribunal has reduced the percentage of disability from 55% to 50%. The tribunal had fixed the monthly income of the claimant as Rs.1,000/-, as there was no proof of income.

9. Apart from the above said amount, the tribunal awarded a sum of Rs.10,000/- towards pain and sufferings. Thus, the total compensation awarded by the tribunal is Rs.1,91,000/- (1,56,000 + 25,000 + 10,000).

10. The claimant had suffered a " fracture/dislocation of sternoclavicular joint Right side " as mentioned in the Accident Register (Ex.P3) and the disability certificate (Ex.P6). No discharge summary from the hospital in which the injured took treatment is filed. A perusal of a copy of Accident Register shows that the claimant was advised to take chest x-Ray and the x-ray showed fracture/dislocation of sternoclavicular joint of right side. In the disability certificate (Ex.P6), it is stated that the movement of right shoulder was restricted by 35 and the partial permanent disability is assessed as 55%. However, Dr.K.Sivasubramaniam (PW2) during the course of cross examination admitted that the percentage of disability was only an approximate value. It is pertinent to point out that no calculation sheet is attached with the disability certificate Ex.P6. The x-ray report is also not filed. In the absence of x-ray report and the discharge summary, the percentage of disability can only be taken up as 15%. Since there is no functional disability, as the claimant is said to be a merchant in buying and selling fruits, multiplier method is not warranted. Hence, a sum of Rs.15,000/- is awarded for partial permanent disability (15 x 1000). Considering the nature of injury, a sum of Rs.5,000/- is awarded towards pain and sufferings, Rs.2,000/- towards extra nourishment and Rs.2,000/- towards transportation. Thus, the claimant is entitled to a compensation of Rs.24,000/- and the same is extracted in the tabular column shown below.

S.Nos.	Heads	Amount granted
1.	Partial permanent disability	15,000
2	Pain and sufferings	5,000
3.	Extra nourishment	2,000
4.	Transportation	2,000/-
total	T	24,000/-

11. In the result,

(i) The appeal is partly allowed and the compensation awarded by the tribunal is scaled down to Rs.24,000/- from Rs.1,91,000/-. No costs.

(ii) The appellant is directed to deposit a sum of Rs.24,000/- with interest at the rate of 7.5% per annum from the

date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. The appellant is at liberty to withdraw the excess amount, deposited by them, if any, over and above the compensation awarded by this court.

(iii) On such deposit being made by the appellant/Insurance Company, the first respondent/claimant is at liberty to withdraw the entire award amount, after following necessary procedures.

(iv). The connected miscellaneous petition is dismissed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

dna
To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.II,
Cuddalore.

Copy to
The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.S.Ramalingam, Advocate sr 83807.

+1 CC to Mr.R.Sathiyakumar, Advocate sr 84308.

C.M.A.No.1907 of 2006
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CP(CO)
SP(11/02/2019)

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