

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.2007 of 2005
and
CMP No.10707 of 2005

National Insurance Company Limited,
2/7, Pudukottai Road,
Trichy District cum Kaspas,
Trichy.

.... Appellant/3rd Respondent

Versus

1. Rukumani ..R1/Petitioner
2. Veeramuthu ..R2/R1
3. Ramesh ...Respondent No.3/R2

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.07.2003 made in M.C.O.P.No.529 of 2001 on the file of the Motor Accident Claims Tribunal (Sub Court,), Bhavani, Erode.

For Appellant : No Appearance

For 1st Respondent : Mr. D. Selvaraju

For 2nd & 3rd Respondents : ----

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 28.07.2003 made in M.C.O.P.No.529 of 2001 on the file of the Motor Accident Claims Tribunal (Sub Court), Bhavani, Erode.

2. The facts of the case are as follows :

On 11.10.2001 at about 7.00 p.m., when the 1st respondent/claimant and another person Azhagu Annamalai were proceeding to hospital on the Goundapadi, Gopi-Main Road, the van bearing Registration No.TN 48 A 8248 @ 407, came in the direction west to east which was driven by its driver in a rash and negligent manner and hit against the 1st respondent/claimant. Both the claimant and Azhagu Annamalai had sustained severe

injuries and initially, they were given first aid treatment at Erode Government Hospital and thereafter, treated as inpatients at Erode Lotus Appollo Hospital. The claimant has also claimed a sum of Rs.3,00,000/- as compensation for the disability, pain and sufferings, medical expenses and loss of income.

3. The 3rd respondent has filed a counter statement denying the injuries and other details of the vehicle involved in the said accident. Because the owner of the vehicle has not informed the accident as per the policy condition. The other averment made by the Insurance company is that the mode of accident and negligence on the part of the Van driver and the sum claimed at Rs.3,00,000/- under various heads is also denied by the Insurance Company.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that the accident was occurred due to the negligent driving on the part of the driver of the vehicle under the Act of 407 and awarded a sum of Rs.2,28,832/- as compensation under various heads as follows:

For Loss of Income	:	Rs.96,000.00
For Pain and Sufferings	:	Rs.10,000.00
For Nourishment	:	Rs.10,000.00
For Transport Expenses	:	Rs. 1,000.00
For medical expenses as per Ex.P7 & P10	:	Rs.61,832.00
For future medical expenses:		Rs.50,000.00
Total		Rs. 2,28,832.00

Aggrieved against the said award, the appellant/Insurance Company has preferred this appeal.

5. In the grounds of appeal, the appellant has stated that when the injuries sustained by the claimant is only fracture, the disability fixed at 10% is excessive. Regarding the sum awarded for loss of income by taking the monthly income of the claimant at Rs.2,500/- is excessive in the absence of any evidence. The other aspects stated in the appeal is that by applying the multiplier method, when the injury sustained by the claimant is only one fracture and the disability is assessed at 40%, the sum awarded under medical expenses is also on the higher side.

6. Today, there was no representation for the appellant. However, the 1st respondent/claimant is present.

7. On perusal of records, it is observed that the claimant was given treatment for 14 days and Ex.P5, the wound certificate was filed before the Tribunal. It is also observed that the 1st

respondent/claimant sustained fracture in her ribs, which is definitely grievous injuries. Before the Tribunal, PW3 was examined who has deposed the fact that because of the fracture in the ribs, even the routine avocation of the claimant is very much affected and still, she feels inconvenience while moving in the stair case and the X-ray also reveals the fact that the union of bones are not proper and hence, he assessed disability at 40% and awarded a sum of Rs.96,000/- by applying the multiplier for the age of the claimant which is very much reasonable. It is also observed that at the time of accident, the claimant was running a Baniyan Company and it has been stated that because of the accident she lost her huge income.

8. On a perusal of the award passed by the Tribunal, it is seen that the monthly income fixed at Rs.2,500/- in the absence of documents is quite reasonable. The sum awarded under the head of pain and sufferings as Rs.10,000/- and the sum awarded under the heads nourishment, transport expenses and medical expenses after assessing Ex.P5 was also properly considered by the Tribunal. For future medical expenses, it is spoken by the witness since at that time, the claimant has to undergo one more surgery in future and hence, under the said head Rs.50,000/-, awarded is also quite reasonable. On the whole, while considering the age and income of the claimant and based on the disability after verifying the injuries and the period of treatment, the sum awarded by the Tribunal in all aspects is quite reasonable and hence the award by the Tribunal and the finding of the Tribunal does not require any interference.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost. The Appellant Insurance Company is directed to deposit the entire Award amount along with interest as awarded by the Tribunal, if not 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 1st respondent/claimant is directed to withdraw the amount on making appropriate application. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Sub Court),
Bhavani, Erode.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

+1 CC to Mr.D.Selvaraju, advocate sr 70468.

C.M.A. No.2007 of 2005
and
C.M.P.No.10707 of 2005

SSV(CO)
SP(21/12/2018)



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