

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.2232 of 2005
and
CMP.No.11880 of 2005

The Divisional Manager,
M/s.New India Assurance Co. Ltd.,
Pondicherry - 605 001.

...Appellant

Versus

1. Baskaran (Deceased)

2. A.Kanagaraju

3. S.Viruthambal

(R3 brought on record as LR of
the deceased 1st respondent vide
order of Court dated 30.08.2006
and made in CMP.Nos.9365 to 9367
of 2006)
(Impleaded as 3rd respondent vide
order of Court dated 30.08.2006 and
made in CMP.No.5260 of 2006)

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173
of the Motor Vehicles Act 1988, against the Judgment and Decree
dated 18.02.2004 made in M.A.C.T.O.P.No.696 of 2002 on the file
of the Motor Accidents Claims Tribunal (I Additional District
Judge) at Pondicherry.

For Appellant : Mr.M.Krishnamoorthy

For Respondent : M/s.P.V.S.Gridhar Associates
for R3

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against
the Judgment and Decree dated 18.02.2004 made in
M.A.C.T.O.P.No.696 of 2002 on the file of the Motor Accidents
Claims Tribunal (I Additional District Judge) at Pondicherry.

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

On 21.05.2001 at about 12.00 p.m., the claimant was proceeding to his Engineering Work Shop, at that time, a two wheeler bearing Registration No.PY-01-Q-7634 belonging to the first respondent came from west to east in a rash and negligent manner, dashed against the claimant. As a result, the claimant sustained grievous injury and he was treated in various hospitals. For the disability, loss of income and expenses for treatment, transport and other aspects, the claimant has claimed a sum of Rs.4,00,000/- as compensation.

3. The Insurance Company, in the counter statement, has denied the negligence on the part of the rider of the TVS 50 XL. The other averment made in the counter statement is that the rider of the said vehicle has no valid driving license at the time of accident, hence, they are not liable to pay compensation.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that the accident occurred only due to rash and negligence on the part of the rider of the TVS 50 XL and directed the respondents 1 and 2 to pay the compensation. The Tribunal has assessed the compensation as per the evidence and documents and awarded a sum of Rs.1,53,955/- under the following heads:

Heads	Amount awarded by the Tribunal (Rs.)
For Loss of Income (15,000 x 18 = 2,70,000 x 40% = 1,08,000)	1,08,000.00
For Pain and suffering	5,000.00
For Medical Bills	17,455.00
For Transport expenses	3,500.00
For Nourishment	20,000.00
Total compensation	1,53,955.00

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

5. In the grounds of appeal, it has been stated that the sum awarded by the Tribunal at Rs.1,53,955/- is very much excessive, because the claimant had sustained only one injury and there was no acceptable documentary evidence to prove the nature of injury and the treatment taken by the claimant. Further, the disability assessed by P.W.2 is also excessive and it is not supported by any document or evidence. Hence, the determination of loss of income by the Tribunal by taking the disability at 40% and fixing the monthly income in the absence of any other document for awarding the compensation various heads is excessive hence

this appeal has to be set aside.

6. Heard both sides and perused the materials available on record.

7. On the side of the appellant, it is argued that the injury sustained by the claimant is an grievous injury based as per Ex.A2. Ex.A2 was issued by Vijaya Hospital, Chennai, in which it has been stated that the injured sustained simple as well as grievous injury. P.W.2 was examined before the Tribunal, who has produced Ex.A8-Disability Certificate, in which the disability has been assessed at 40%.

8. On perusal of Ex.A2-wound certificate, it is seen that there is no clear mention with regard to the nature of injury and the treatment given to the injured person and there is also no discussion on the findings in respect of grievous injury sustained by the claimant. But the Tribunal has considered it as a grievous injury and fixed his notional income at Rs.5,000/- and assessed the loss of income by applying the multiplier method and arrived the sum of Rs.1,08,000/-. Hence, it is vehemently argued by the appellant that in the absence of any documents and proof relating to the nature of injury and the treatment given to the claimant and the document relating to the expenses incurred by the claimant, for the treatment or the injury, the compensation awarded by the tribunal by taking disability at 40% is not all justifiable.

9. On the other hand, it is argued by the respondent that the sum awarded by the Tribunal is very much reasonable in view of injury sustained by the claimant.

10. On perusal of the document, it is seen that there is no clear fact before the Tribunal for assessing the injury as grievous in nature and based on the treatment, the tribunal has taken disability at 40%. Hence, in view of the arguments and non production of documents and evidence to assess the disability, this Court is of the view that the multiplier method applied by the calculation, the loss of income is not a reasonable one. However, taken into consideration the evidence, the certificate issued by P.W.2 cannot totally be disordered, hence, the loss of income is calculated by taking Rs.1,000/- for disability. Accordingly, this Court modifies the sum at Rs.40,000 (Rs.1,000 * 40%). Regarding the medical expenses, the sum awarded by the Tribunal is based on the relevant document on Ex.A6, hence, the said amount need not be altered. The sum awarded for 'pain and sufferings' is also reasonable. Likewise the sum awarded for 'transport expenses' at Rs.7,500/- is also based on Ex.A7 hence, does not require any modification by this Court. The sum awarded for nourishment is reduced from Rs.20,000/- to Rs.10,000/-.

11. The sum awarded by the Tribunal under the heads are modified as follows :

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
For Loss of Income	1,08,000.00	40,000.00
For Pain and suffering	5,000.00	5,000.00
For Medical Bills	17,455.00	17,455.00
For Transport expenses	3,500.00	3,500.00
For Nourishment	20,000.00	10,000.00
Total compensation	1,53,955.00	75,955.00

12 . In view of the above the said modification, the total sum awarded by the Tribunal has been reduced to Rs.75,955/-. The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

13. It is represented by the appellant/Insurance Company that the entire award amount has already been deposited. Hence, the appellant/Insurance Company is permitted to withdraw the balance amount, if any, deposited by them.
gbi/lpp

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The (I Additional District Judge),
Motor Accidents Claims Tribunal
Pondicherry.

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

+1cc to Mr.M.Krishnamoorthy, Advocate, SR.No.73143/19

CMA.No.2232 of 2005

and

CMP.No.11880 of 2005

Kak(01/07/2019)