

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2018

C O R A M

THE HONOURABLE MRS. JUSTICE S. RAMATHILAGAM

C.M.A.No.2692 of 2006
and
M.P.No.1 of 2006

The Divisional Manager
New India Assurance Company Limited
Pondicherry.Appellant

Vs.

1. S. Ramesh
2. Abdul Rasheed
3. The Divisional Manager
Oriental Insurance Company Limited
Pondicherry.
4. Gokul Raj Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree in M.C.O.P No.754 of 2003 on the file of the Motor Accidents Claims Tribunal [Additional Subordinate Judge], Pondicherry, dated 13.06.2005.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.R. Karthikeyan

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred by the appellant/Insurance Company challenging the judgment and decree in M.C.O.P. No.754 of 2003 on the file of the Motor Accident Claims Tribunal [Additional Subordinate Judge], Pondicherry, dated 13.06.2005.

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

On 19.06.2003 at about 06.45 hours while the petitioner was driving the tanker lorry bearing Registration No.PY-01-J-0456 at

a normal speed from south direction, at that time the first respondent's vehicle viz., lorry bearing Registration No.TN-21-D-2413 was driven by its driver in a rash and negligent manner, dashed against the petitioner's vehicle. Due to the said accident, the Claimant sustained severe injuries all over the body and immediately he was taken to Chengalpattu Government General Hospital for treatment and was also to various Hospitals. In spite of treatment, he has sustained displacement and also his right leg got amputated and his occupation was totally affected. Hence, he claimed a sum of Rs.20,00,000/- as compensation under various heads.

3. The 4th respondent in his counter statement has denied the rash and negligent manner on the part of the driver of the lorry bearing Registration No.TN-21-B-2413 and further stated that the accident had occurred only due to the rash and negligent driving on the part of the driver of the tanker lorry, who had driven the lorry without valid driving licence. The age, income and profession of the petitioner also very much denied by the respondent. The First Information Report was also registered by the police against the cleaner of the said lorry. The other aspect regarding the injury sustained by the Claimant and the claim made for the permanent disability and grievous injury in the absence of medical evidence are very much denied by the respondent.

4.The Tribunal after analysing the evidences and documents placed before the Tribunal has given a finding that the accident took place only due to the rash and negligent driving on the part of the 3rd respondent driver and not due to the first respondent driver, who is the petitioner. The Tribunal has also determined the compensation by taking into consideration the age, occupation and income of the claimant and awarded a sum of Rs.6,74,000/- under various heads. Aggrieved against the said liability and the compensation, the Insurance Company who is the 4th respondent before the Tribunal has preferred the present appeal.

5. It is seen from the records that the Tribunal has awarded a sum of Rs.6,74,000/- under various heads are as follows:

Sl.No.	Heads	Awarded by the Tribunal
1.	Loss of Income	Rs.4,76,000/-
	Medical Expenses	Rs.38,000/-
2.	Pain and Sufferings	Rs.25,000/-
3.	Loss of Marital Life	Rs.25,000/-
4.	Travelling Allowance & Extra Nourishment	Rs.10,000/-

Sl.No.	Heads	Awarded by the Tribunal
5.	Artificial Leg	Rs.1,00,000/-
	Total	Rs.6,74,000/-

6. In the grounds of appeal, the appellant has stated that the Tribunal has committed grave error by observing that the accident occurred due to the driver of the lorry bearing Registration No.TN-21-B-2413 owned by the 4th respondent, insured with the appellant. It is stated that the Claimant was solely responsible for the accident who drove the tanker lorry bearing Registration No. PY-01-0456. It is also stated that the evidence of PW1-Claimant and PW2-Cleaner of the tanker lorry driven by the claimant were not corroborated by any documentary and independent witnesses. In the First Information Report-Ex.P1, the claimant was shown as accused whereas, the finding of the Tribunal is made against the other respondent which is not proper. The injured person/claimant is responsible for the accident and the investigation was also closed based on the said fact. The other grievances raised by the appellant is that the Tribunal ought to have at least equally held that the claimant had equally contributed to the accident in view of the head on collision of two heavy vehicles. The Tribunal ought to have awarded the excessive sum of Rs.6,74,000/- as compensation for the amputation below the right knee. The income fixed by the Tribunal at Rs.3,500/- is also stated on excessive. Hence, on the whole, the sum arrived as compensation by the Tribunal at Rs.4,76,000/- under various heads is huge.

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

8. On the side of the appellant, it is argued that when there is collision of two vehicles, the liability fixed only against the driver of the lorry/4th respondent is not proper and justified. The evidence placed before the Tribunal was not properly considered and hence, when two vehicles were involved in the accident due to the negligence on both sides, the Tribunal has not considered the contributory negligence. On a perusal of the evidence and also the document, it is seen that the Tribunal has observed that based on the FIR alone, the aspect of negligence cannot be attributed to any one of the drivers and the said FIR which was pending before the learned Magistrate at Madhuranthagam was also closed under Section 167 (5) of the Criminal Procedure Code. The said FIR was preferred by the cleaner of the lorry and in the said complaint also no negligence was fixed on the part of the petitioner and the complaint is made only against both the lorries. In the absence

of the proper evidence, based on the FIR and investigation, the tribunal has given finding. The other aspect with regard to negligence, the evidence of PW1 and PW2 which are very much corroborating with each other has sufficiently proved the negligence on the part of the driver of the lorry bearing Registration No.TN-21-B-2413. Hence, fixing the liability on the part of the 3rd respondent driver is very much reasonable and that aspect, the argument advanced by the appellant is not a valid one and no interference is required in that aspect.

9. While arriving the compensation, the petitioner sustained injuries on the right leg and he was admitted at the Government General Hospital, Chengalpattu and later he was admitted Pondicherry Government Hospital for a long period and he has given treatment as inpatient and during treatment his right leg was also got amputated below knee. These facts were placed before the Tribunal by filing the documents in Ex.P11 and Ex.P12 issued by the Government Hospital, Pondicherry. PW3 (Doctor) was also examined before the Tribunal, who has categorically deposed the disability sustained by the claimant as under:

The petitioner has examined Dr.Ramanujam as PW3. He has stated in his evidence that he has examined the petitioner on 04.10.2003 and noted the following disability.

- (i) Complete function loss of the lower right leg.
- (ii) Phartem limb of right lower leg.
- (iii) Cannot walk without aids.
- (iv) Lives a vegetative life.
- (v) Traumatized arthritides of right hip.
- (vi) Atrophy of right thigh.
- (vii) Tenderness of hip of the stump.
- (viii) Due to head injury guiddiness present.
- (ix) Mental agony and anxiety.

10. PW3 [Dr.Ramanujam], has also deposed that the disability sustained by the petitioner and he has also filed a certificate Ex.P16 before the Tribunal. It is also observed that the petitioner is the driver and the same was very much proved from the facts that have been stated in the claim application and that the accident have occurred while he was driving the tanker lorry. Hence, his occupation as a driver, the disability sustained by him definitely causes loss of income and also loss of earning capacity. Hence, the disability taken by the Tribunal is proper. The monthly income fixed by the Tribunal by considering the statement of PW2 that the petitioner being a driver earn Rs.200/- per day and he will be working 15 to 20 days per month. Hence, the monthly income fixed at Rs.3,500/- is very much proper. Accordingly, the loss of income calculated at Rs.4,76,000/- by deducting 1/3rd amount towards personal expenses and applying multiplier 17 is also proper and does not warrant any interference by this Court. It is also observed

from Ex.P13, the medical bills issued by the Hospitals that he was under treatment for certain period, hence, considering the pain and suffering due to surgery on his right leg, the sum awarded at Rs.25,000/- towards pain and suffering is not on the higher side. Therefore, the same is confirmed. Since the medical expenses also proved by way of document, the sum awarded under the head Medical Expenses at Rs.38,000/- is very much proper and same need not be modified. Likewise, the sum awarded the loss of marital life at Rs.25,000/- and for nourishment at Rs.10,000/- is also proper. Similarly, the sum awarded at Rs.1,00,000/- against the claim of the petitioner at Rs.1,56,000/- for providing artificial foot is also proper and reasonable.

11.In view of the above discussion, it is clear that the sum considered by the Tribunal is based on the evidence one document substantiating the claim made in respect of disability, age and occupation etc., hence, this Court is of the view that the award passed by the Tribunal is reasonable and does not require any interference. Accordingly, the award passed by the Tribunal in M.C.O.P.No.754 of 2003 on the file of the Motor Accidents Claims Tribunal [Additional Subordinate Judge], Pondicherry, dated 13.06.2005 is confirmed.

12.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.The Appellant/Insurance Company is directed to deposit the entire award amount awarded by the tribunal with interest and costs, before 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 Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon.

-s/d-
Assistant Registrar (CCC)

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Sub-Assistant Registrar

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To

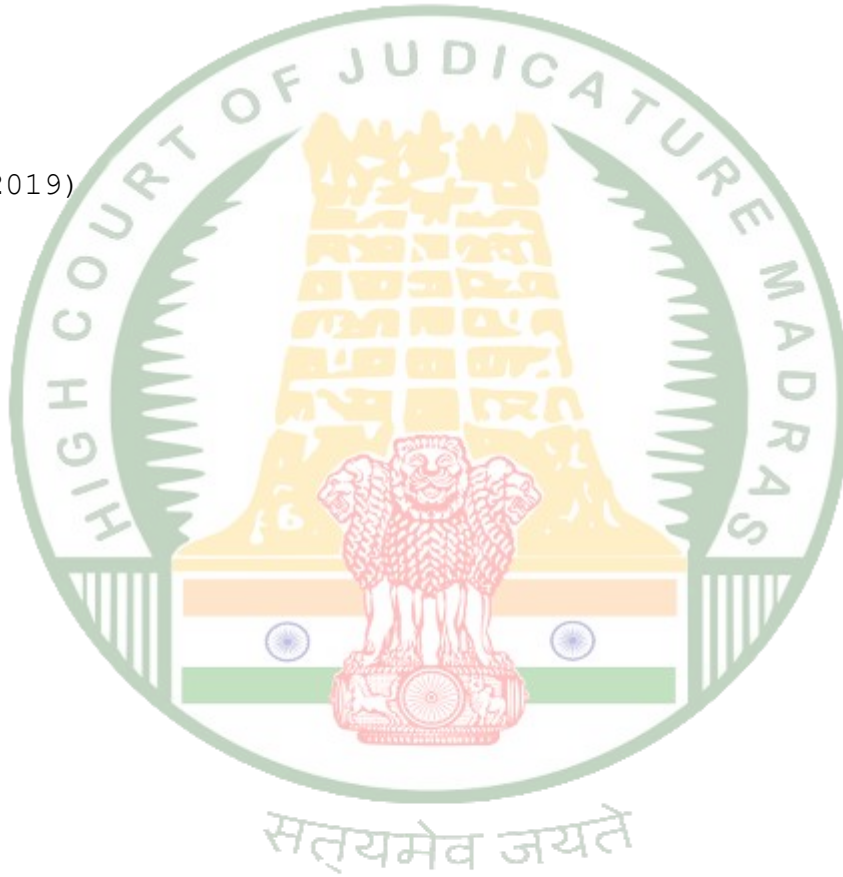
1.The Motor Accident Claims Tribunal
Additional Subordinate Judge
Pondicherry.

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+1 CC to Mr.Karthikeyan, Advocate sr 74841.
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C.M.A.No.2692 of 2006

MG(CO)
SP(22/07/2019)



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