

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.2763 of 2005
and
C.M.P.No.14289 of 2005

United India Insurance Co. Ltd.,
Divisional Office, Dr.Sankaran Road,
Namakkal. ... Appellant/II Respondent

Versus

1. M.Balasubramaniam
2. K.Selvaraj ... Respondents/Petitioners/
Ist Respondent

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.10.2004 made in M.A.C.T.O.P.No.592 of 2003 on the file of the Motor Accident Claims Tribunal, (Additional District Judge, FTC-3) , Namakkal.

For Appellant : Mr.K.Suryanarayanan

For Respondents : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 08.10.2004 made in M.A.C.T.O.P.No.592 of 2003 on the file of the Motor Accident Claims Tribunal , (Additional District Judge, FTC-3), Namakkal.

2. The facts of the case are as follows :

On 11.03.2003 at about 8.00 p.m., when the petitioner was proceeding in his Bullet motorcycle bearing Registration No.TSH 3326 at Thattara Street, Near Jothi Theatre, Namakkal, a Martiz car bearing Registration No. TN 28 J 1632 driven by its driver in a rash and negligent manner and dashed against the petitioner. In the said accident, the petitioner sustained severe injuries and he was given treatment for the injuries sustained, he also incurred huge medical expenses. Hence, he

claimed a sum of Rs.5,00,000/- as compensation before the Tribunal.

3. The respondent/Insurance Company in the counter statement denied the mode of accident. The sum claimed at Rs.2,00,000- for medical treatment was also denied by the respondent. Regarding the rash and negligent driving on the part of the car was also denied and stated that the accident occurred only due to the rash and negligent driving on the part of the petitioner. The other aspects regarding age, income, medical expenses and loss of earning are all stated as very much excessive.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that based on the FIR and the charge sheet, it is clear that the accident had occurred only due to rash and negligent driving on the part of the driver of the car. The Tribunal has also verified the documents relating to injury, treatment and disability and awarded a sum of Rs.2,71,500/- against the claim of Rs.5,00,000/- as compensation under various heads as follows:

For Loss of income, disability and Loss of earning power:	Rs.2,04,000.00
For Pain and Sufferings :	Rs. 20,000.00
For medical expenses :	Rs. 47,500.00

Total	Rs. 2,71,500.00

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

5. In the grounds of appeal, it has been stated that the sum awarded by the Tribunal under the head of future loss of income at Rs.2,04,000/- is without any basis and evidence, when there is no documents filed to prove the income or the occupation. Further, the Tribunal has committed an error by applying the multiplier method for assessing the loss of income is on the higher side, when the injury is only one and the disability is very much on the meager side. Hence, the Tribunal has not considered that aspect and the sum awarded under the head for pain and sufferings and medical expenses are also very much excessive.

6. Heard appellant's side and perused the documents available on record.

7. With regard to the main argument of the appellant in fixing the monthly income for the claimant, it is seen that though the claimant has stated that he was earning Rs.10,000/- per month, the Tribunal has taken only Rs.4,000/- and arrived loss of income. The said amount is disputed by the claimant as excessive and without any basis.

8. On perusal of evidence, it is seen that though there is no document filed with regard to the occupation of the claimant as driver, the Tribunal has considered the other aspect that he is also doing agricultural work. Based on the relevant documents, the monthly income at Rs.4000/- fixed by the Tribunal by taking into consideration the age of the petitioner as 35 years is very much reasonable. Further, the arguments advanced by the learned counsel for the appellant is that for a simple fracture, the disability assessed by the Doctor at 35% is on the higher side and the determination of the Tribunal by applying the multiplier method is also on the higher side. But, on perusal of documents, it is seen that PW2, Doctor deposed before the Court that he has perused the documents relating to injury and treatment and based on the inconvenience, injuries suffered by the claimant, he has assessed the disability at 35%. Whereas, the Tribunal has taken only 25%. Since he was doing agricultural work and occupation by way of driver, the application of multiplier method for calculating the loss of income is proper and reasonable and the sum arrived on the said basis is also very much reasonable and proper. With regard to the sum awarded under the other heads for pain and sufferings, is also very much reasonable and regarding the medical expenses, that was also awarded based on the relevant documents. Hence, considering the age, occupation and income, the compensation arrived by the Tribunal under the various heads and also by applying the multiplier method is very much reasonable. Hence, the finding of the Tribunal with regard to liability and quantum and the sum awarded by the Tribunal does not require any interference.

9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

10. Accordingly, 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 Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal
(Additional District Judge, FTC-3) ,
Namakkal.

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

+1cc to Mr.K.Suryanarayanan, Advocate sr.73358

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and
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