

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.3179 of 2005

Divisional Officer,
Divisional Office,
New India Assurance Company Ltd.,
K. G. Swamy Complex,
No.14/7 Pagalur Road,
Hosur.

....Appellant/2nd Respondent

1. Dhanasekar

... 1st Respondent/Petitioner

2. T.Y.Ramachandran

(2nd Respondent an ex-parte
before the Lower Court and hence
notice may be dispensed with)

... 2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree made in M.A.C.T.O.P.No.399 of 2003 on the file of the Motor Accident Claims Tribunal (Sub Court) Krishnagiri dated 21.12.2004.

For Appellant : Mr.P.G.Padmanabhan

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree passed in M.A.C.T.O.P.No.399 of 2003 on the file of the Motor Accident Claims Tribunal (Sub Court) Krishnagiri dated 21.12.2004.

2. The facts leading to the claim application are as follows :-

On 21.07.2002 at about 7.00 pm when the petitioner was walking in the extreme left side mud portion of the road from east to west direction, a two wheeler bearing Registration No.TCD 9836, Enfield Explorer, belonging to the first respondent came in a rash and negligent manner and dashed against the petitioner. The petitioner was thrown off and fell down on left

side and sustained grievous injuries all over the body. He has also sustained disability and he incurred heavy medical expenses. Hence, he claimed a sum of Rs.4,00,000/- as compensation before the Tribunal.

3.In the counter statement, the respondents has denied the mode of accident by stating that the rider of the motorcycle drove the motorcycle with caution by observing all rules and there is no negligent driving on the part of the rider of the two wheeler and it is the petitioner who, all of a sudden, crossed the road without hearing the horn given by the rider of the said motorcycle and hence denied the aspect of rash and negligent driving and also denied the compensation awarded under various heads as excessive one.

4.The Tribunal after analyzing the evidence and documents placed before the same, has given findings that it is the rider of the two wheeler whose rash and negligence driving resulted in the accident in which the petitioner sustained severe injuries. The Tribunal has awarded a sum of Rs.3,10,000/- as compensation under various heads which are as follows:-

Heads	Amount awarded by the Tribunal (Rs.)
Injuries	1,00,000/-
Permanent Disability	50,000/-
Loss of Income	25,000/-
Medical Expenses	25,000/-
Pain and Sufferings	50,000/-
Loss of Future Earning	25,000/-
Transport charges	10,000/-
Nourishment	13,000/-
Damages of clothes	2,000/-
Attender charges	10,000/-
Total	3,10,000.00

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

6.In the grounds of appeal, it has been stated that the sum awarded by the Tribunal is highly excessive. The income that has been determined by the Tribunal is also without any proof.

The sum awarded for disability is Rs.50,000/- is highly excessive, when the Doctor assessed the disability at 25%. The other aspects regarding the sum awarded for Loss of Income, Transport Expenses, Nourishment and Medical Expenses are all on the higher side. Hence, the compensation awarded by the tribunal as Rs.3,10,000/- is without any proper evidence and documents.

7.The appellant/Insurance Company has also argued that the sum awarded by the Tribunal as compensation for simple injuries and for the disability arrived by the Doctor is very meager and it is also argued by the Appellant that when a sum of Rs.50,000/- was awarded for 25% disability by considering the evidence and documents, a further sum awarded by the Tribunal at Rs.1,00,000/- under the head "grievous injury" is highly excessive. It is also argued that as per Ex.P2 the Accident Register in which it has been stated that the claimant sustained only three grievous injuries, for which the disability assessed by the Doctor at 25% is not proper.

8.It is also argued that the Tribunal has awarded Rs.1,00,000/- for the injuries and for the disability assessed by the Doctor at 25%, the sum awarded at Rs.50,000/- is on the higher side. It is also argued that when the huge sum is awarded at Rs.50,000/- as against 25%, further sum for future earning capacity awarded at Rs.25,000/- is improper and not reasonable. The evidence of the Doctor clearly spoken before the Tribunal and the disability has been properly arrived at 25%. Hence, the sum awarded for the injury, permanent disability and future earning power has to be properly considered. Accordingly, this Court modifies the amount awarded by the Tribunal as follows:-

Heads	Amount awarded (Rs.)	Amount modified (Rs.)
Injuries	1,00,000/-	1,00,000/-
Permanent Disability	50,000/-	25,000/-
Loss of Income	25,000/-	25,000/-
Medical Expenses	25,000/-	25,000/-
Pain and Sufferings	50,000/-	25,000/-
Loss of Future Earning	25,000/-	25,000/-
Transport charges	10,000/-	10,000/-
Nourishment	13,000/-	13,000/-
Damages of clothes	2,000/-	2,000/-
Attender charges	10,000/-	10,000/-
Total	3,10,000.00	2,60,000/-

9. With the above modification, this Civil Miscellaneous Appeal is partly allowed. No costs.

10. The appellant/Insurance Company is directed to deposit the entire award amount, in respect of above Appeal as per the modified award passed by this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, 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

at/gbi

To

1. The Motor Accident Claims Tribunal
(Sub Court) Krishnagiri.
2. The Section Officer,
V.R. Section,
High Court, Madras.

+lcc to Mr.P.G.Padmanabhan, Advocate sr.no.74431

CMA.No.3179 of 2005

mr(co)
nr 30/01/2019