

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2018

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THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.919 of 2006

and

CM.P.No.3627 of 2006

National Insurance Company Ltd.,
Division-2, No.46, Moore Street,
Chennai-1. Appellant /R2

Versus

1. RamuR1/ Petitioner
2. T.S.KannanR2/R1
(The 2nd respondent remained exparte
before the lower Court)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 11.02.2005 made in M.A.C.T.O.P.No.276 of 2002 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), at Tiruvallur.

For Appellant : Mr.M.Krishnamurthy

For Respondent1 : Not Ready Notice

For R2 : exparte before Tribunal

सत्यमेव जयते

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 11.02.2005 made in M.A.C.T.O.P.No.276 of 2002 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Tiruvallur.

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

On 04.01.2002 at about 6.00 a.m., when the claimant/1st respondent was proceeding to Manavalan Nagar, Tiruvallur, in his motor cycle bearing Registration No.TN 02 D 1544 in the Koot Road near Indira Gandhi Statute, the vehicle (Milk Van) bearing Registration No.TN 22 D 5151 was driven by its driver/2nd respondent in a rash and

negligent manner hit against the claimant/1st respondent and he sustained severe injuries. The claimant/1st respondent has claimed a sum of Rs.3,00,000/- as compensation.

3. The 1st respondent was set exparte before the Tribunal.

4. The 2nd respondent/Insurance Company, in the counter statement, has denied the averments made in the claim petition that the driver of the vehicle was in possession valid license and also the vehicle was insured with this respondent. The other aspects regarding nature of injury, age, occupation, income, treatment and disability and the claim at Rs.3,00,000/- are denied by the respondent.

5. The Tribunal, after analyzing the evidence and documents placed before it, has awarded a sum of Rs.2,00,000/- on the following heads :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of Income	20,000.00
For Transport expenses	5,000.00
For Nourishment	5,000.00
For Damages to the petitioner's property	5,000.00
For Medical Expenses	50,000.00
For Pain and Sufferings	15,000.00
For Permanent Disability	80,000.00
For Loss of Earning Power	20,000.00
Total compensation	2,00,000.00

Aggrieved against the said award passed by the Tribunal, the second respondent/Insurance Company has preferred this appeal.

6. In the grounds of appeal, the appellant/Insurance Company has stated that the injured person sustained only a fracture of patella in the right leg and the treatment required by the claimant for the said injury is only for 7 days. Hence, the sum awarded by the Tribunal at

Rs.20,000/- towards loss of income in the absence of documentary evidence is highly excessive. Then, the sum awarded at Rs.80,000/- for the fracture for the limited period of treatment, is also highly excessive. The sum awarded for loss of earning power and also the sum awarded for medical expenses at Rs.50,000/- are also excessive. The further sum awarded for damages to the property is also on the higher side.

7. Heard Mr.M.Krishnamurthy, learned counsel for the appellant. No appearance for the respondents.

8. The learned counsel for the appellants has argued that when the injuries sustained by the claimant/1st respondent is only a fracture, the loss of income determined by the Tribunal is highly excessive and the sum awarded under the other heads are also without any evidence and relevant documents.

9. On perusal of the judgement and award, it is observed that the injured/claimant is 55 years and he was working as a also Head Master in the Panchayat Union School. It is observed from the documents that the claimant sustained fracture injuries and surgery was also done and plates and screws were also fixed for the said injuries and these injuries are also reflected in the document Ex.P3 i.e discharge summary. The 1st respondent/claimant has also produced the documents relating to the medical expenses which are very much proved by Ex.P4. Hence, for the transport expenses Ex.P5 and for the medical prescription Ex.P7 were also produced before the Tribunal. It is the argument of the appellant that the disability certificate was given by some other Doctor, who has not treated the injured person. However, it is observed that the disability sustained by the claimant was assessed by PW2 and he has issued the disability certificate Ex.P8 by fixing disability at 60% and after assessing the capability of the movement of the leg of the injured/claimant. Hence, based on the evidence and documents, the Tribunal has awarded the compensation. Against the claim made by the claimant, the sum awarded by the Tribunal under the transport expenses, nourishment and also the probable income that would have been incurred by the person for such a injury are all properly assessed. It is also observed that against the claim of Rs.3,00,000/-, the Tribunal has awarded a sum of Rs.2,00,000/- by properly assessing the disability, the probable income, loss of earning power and also the other expenses incurred by the claimant. In view of the same, the sum awarded by the Tribunal is quite reasonable. The interest awarded at 9% per annum by the Tribunal is to be

reduced to 7.5%. Hence, in view of the modification of the percentage, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

10. Accordingly, the appellant/Transport Corporation is directed to deposit the entire award amount, in respect of above Appeal as per the modified interest by this Court, 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 iv)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Subordinate Judge), at Tiruvallur.
2. The Section Officer,
V.R.Section,
High Court, Madras.

CMA.No.919 of 2006
and

C.M.P.No.3627 of 2006

ASK (20/12/2018)

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