

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2018

CORAM:

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A.No.749 of 2005

and

CMP.No.4180 of 2005

The New India Assurance Co.Ltd.,
Regina Mansion,
46, II line beach,
Moore Street,
Chennai - 600 001.

... Appellant/2nd Respondent

Versus

1.Valliammal ...1st Respondent/Petitioner

2.E.Neelamegam ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.02.2003 made in M.C.O.P.No.2106 of 1999 on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

For Appellant : Mr.K.Padmanabhan
For Respondents : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 17.02.2003 made in M.C.O.P.No.2106 of 1999 on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

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

On 01.01.1999 at about 16.00 hours, the claimant was walking near Koothavakkam Village, at that time, an auto bearing Registration No.TN-09-J-9403 driven by it driver in a rash and negligent manner, hit against the claimant and caused severe injuries. The claimant has claimed a sum of Rs.3,00,000/- as compensation.

3. The Insurance Company, in the counter statement, has denied the negligence on the part of driver of the auto. The injuries sustained by the claimant and the disability were also

denied. The compensation claimed under various heads and the total claim is stated as excessive.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that the accident occurred due to the rash and negligent driving on the part of the driver of the auto, hence awarded a sum of Rs.1,96,000/- under various heads as follows:

Head	Amount awarded by the Tribunal (Rs.)
For Loss of income	30,000.00
For Transport expenses	2,000.00
For Nourishment	2,000.00
For Medical Expenses	2,000.00
For Attender Charges	10,000.00
For Pain and Suffering	25,000.00
For Disability	75,000.00
For loss of earning capacity	50,000.00
Total Compensation	1,96,000.00

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

5. In the grounds of appeal, it has been stated by the appellant/Insurance Company that the claim application has been filed by the claimant itself is not maintainable, since, the claim was made under Section 163A of the Act. Further, the sum awarded under the head loss of income, transport expenses, medical expenses and nourishment are excessive. When, there is no loss of earning power, the Tribunal awarded at Rs.50,000/- under the said head is highly excessive and the sum awarded for disability is also on the higher side. The provisions of Section 163A and also Second schedule of M.V.Act 1988 is not followed and in the absence of the documentary evidence, the age and income of the claimant has been considered by the Tribunal is not justified.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. It is the main argument advanced by the appellant/Insurance Company that since the claim application is made under Section 163A of the M.V.Act, the award passed by the Tribunal is not justified. It is brought to the notice of this

Court that when the claimant himself admitted the fact that he was a coolie and earning Rs.200/- per day, he is entitled to file claim application under Section 163A of the M.V.Act. The Tribunal has not considered the said aspect. The other argument advanced by the appellant is regarding the disability. The Doctor, who examined is not an authorised person, to give such disability certificate. Subsequently, the Doctor who examined the claimant assessed the disability at 30%. The other Doctor has assessed the disability at 55%. The said two Disability Certificates Exs.P8 and P10 were produced before the Tribunal. Ex.P7-Discharge Summary, it is observed that the claimant sustained fracture injury. When there is no physical deformity, the percentage of disability assessed by the Doctor at 55% in Ex.P10 is highly excessive and not a credible one, and as stated by the Ex.P10, no fracture on his head, because he suffered only head injury as per Ex.P7 and on account of the same, the claimant was having nerves pain in her face. Hence, the liability taken by the Tribunal at 85% and awarded a sum of Rs.75,000/- in the absence of any reliable evidence has to be set aside.

8. On a perusal of the award, it is seen that the Tribunal has fixed the disability, based on the evidence placed by two witnesses viz., P.Ws.3 and 4 and awarded a sum of Rs.75,000/-. As per the arguments of the appellant/Insurance Company, the percentage assessed by two persons are not qualified persons and for mere fracture injury, the percentage assessed is on the higher side. Hence, the sum awarded under the head is to be modified. When the occupation, income of the claimant stated that he was a coolie and earning a sum of Rs.200/- per day, the Tribunal has awarded a sum for loss of earning at Rs.30,000/- is highly excessive and that has to be properly modified. Though, it is vehemently argued by the appellant that the petition has not been filed under the extra provisions of law and the Tribunal has not considered the same and awarded a huge sum under various heads, and it was not justified.

9. In view of the evidence and documents, with regard to the nature of injury, disability sustained by the claimant and his occupation, the sum awarded under the head loss of income and loss of earning power have to be properly considered. Hence, the sum awarded by the Tribunal under the heads are modified by this Court as follows :

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
For Loss of income	30,000.00	15,000.00
For Transport expenses	2,000.00	2,000.00

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
For Nourishment	2,000.00	2,000.00
For Medical Expenses	2,000.00	2,000.00
For Attender Charges	10,000.00	5,000.00
For Pain and Suffering	25,000.00	15,000.00
For Disability	75,000.00	50,000.00
For loss of earning capacity	50,000.00	25,000.00
Total Compensation	1,96,000.00	1,16,000.00

10. Hence, the award of Rs.1,96,000/- granted by the Tribunal in MCOP. No.2106 of 1999 is reduced to Rs.1,16,000/-. The said amount shall carry the same rate of interest as awarded by the Tribunal.

11. In view of the above, this Civil Miscellaneous Appeal is allowed. No costs. Accordingly, the appellant/Insurance Company is directed to deposit the entire award amount, in respect of above Appeal as per the order of 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.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

lpp

To

1.The Motor Accident Claims Tribunal,
(VI Judge, Court of Small Causes), Chennai

2.The Section Officer,
Vernacular Section,
High Court, Madras.

+1 CC to Mr.K.Padmanabhan, Advocate sr 70335.

C.M.A.No.749 of 2005

and

CMP.No.4180 of 2005

RK (CO)

SP(22/07/2019)