

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3042 of 2008

and

M.P.No.1 of 2008

HDFC Chubb General Insurance Co. Ltd.,
Motor Third Party Cell, Raheja Towers
Ground Floor, No.177, Anna Salai,
Chennai-600 002.

..Appellant/2nd Respondent

Vs.

1. L.Seethapathy,

...1st Respondent/Claimant

2. May (India) Laboratories P Ltd.,
No.3, Lakshmanan Street, T. Nagar,
Chennai- 600 017.

...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 as against the Award of the Learned Motor Accidents Claims Tribunal (Sub-judge) at Ponneri in MACTOP No.348 of 2004 dated 14.03.2007.

For Appellant : Mr. K. Suryanarayanan

For Respondent : Mr. N.Elayaraja for R1
R2-Served-No appearance(Exparte)

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the award dated 14.3.2007 passed by the Motor Accident Claims Tribunal, Sub Judge, Ponneri in MACTOP.No.348 of 2004.

2.The brief facts leading to the filing of the instant appeal are as follows;

(i) the 1st respondent sustained injuries on 11.4.2004 as a result of an accident caused by a car bearing Registration No.TN-09-AD 5238 owned by the 2nd respondent and insured with

the appellant. The 1st respondent preferred a claim before the Motor Accident Claims Tribunal seeking a compensation of Rs.3 lakhs for the injuries sustained by him as a result of the accident.

(ii) The Motor Accident Claims Tribunal, by its award dated 14.3.2007 in MACTOP.No.348 of 2004 directed the appellant to pay the 1st respondent a sum of Rs.1,68,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

(iii) Aggrieved by the quantum of compensation awarded by the tribunal, the instant appeal has been filed by the Insurance Company.

3. Heard Mr.K.Suryanarayanan, learned counsel for the appellant and Mr.N. Elayaraja, learned counsel for the 1st respondent. The 2nd respondent who is the owner of the insured vehicle has remained exparte both before the tribunal as well as before this Court.

4. According to the learned counsel for the appellant, the compensation awarded by the tribunal to the 1st respondent under the impugned award is an excessive compensation. According to him, the tribunal has erroneously awarded Rs.18,000/- towards loss of earnings, Rs.15,000/- towards pain and sufferings, Rs.70,000/- towards disability and Rs.50,000/- towards, loss of earning capacity. In all, a total compensation of Rs.1,68,000/- was awarded by the tribunal, which, according to him, is excessive.

5. According to the learned counsel for the appellant, the tribunal ought not to have awarded a compensation towards disability as well as towards loss of earning capacity as it would amount to duplication for the same head of compensation.

6. The 1st respondent has sustained fracture of thigh bone and underwent surgery and was hospitalised in Government Hospital for almost one month. The 1st respondent was a driver of a bore well machine and even though he had claimed that he was earning a monthly income of Rs.4500/-, the tribunal has assessed the monthly income only at Rs.3000/-. Considering the nature of injuries sustained by the 1st respondent, as well as his age and his avocation, this Court is of the considered view that the compensation awarded to the 1st respondent under the impugned award is a just compensation. Further, it is now well settled that the Courts are empowered to grant compensation separately towards disability as well as towards loss of earning capacity. In such circumstances, this Court is of the considered view that there is no merit in the instant appeal.

Therefore the appeal deserves to be dismissed.

7. In the result,

i) the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

ii) The appellant Insurance Company is directed to deposit the amount awarded by the tribunal along with accrued interest to the credit of MACTOP.No.348 of 2004, less the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order.

iii) On such deposit being made, the 1st respondent is permitted to withdraw the same along with accrued interest on filing an appropriate application.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr

To

1. The Subordinate Judge,
The Motor Vehicles Accident Claims Tribunal,
Ponneri.
2. The Record Clerk,
VR Section,
Madras High Court.

+1cc to Mr.N.Elayaraja, Advocate, S.R.No.75766

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.75105

C.M.A.No.3042 of 2008

kji(co)

kak(07/01/2019)