

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.10.2018

CORAM:
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE
C.M.A.No.1484 of 2010

Branch Manager
The New India Assurance Co. Ltd.,
Kolar, Karnataka ...Appellant/2nd Respondent

Vs

1.Venkatachalam ...1st Respondent/Petitioner
2.K.Shankar,
(set exparte before
the tribunal) .. 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accidents Claims Tribunal, (Sub-Court), Thirupathur, Vellore District made in MCOP.No.318 of 2003 dated 05.02.2007.

For Appellant : Mr.S. Jayasankar

For Respondents : Mr.D. Selvaraju for R1
R2-Exparte.

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 5.2.2007 passed by the Motor Accident Claims Tribunal, Sub Court, Tiruppathur, Vellore District in MCOP. No.318 of 2003.

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

(i) The 1st respondent sustained injuries on 10.10.2002 while he was travelling as a pillion rider in a TVS Suzuki Motor Cycle bearing Registration No.TN 29/Z5116 which collided with a lorry bearing Registration No.KA08/2728 owned by the 2nd respondent and insured with the appellant.

(ii) The 1st respondent preferred a claim before the Motor Accident Claims Tribunal, Subordinate Judge, Tirupattur claiming a compensation of a sum of Rs.3,00,000/- in MCOP.No.318 of 2003 against the owner and insurer (appellant) of the lorry bearing Registration No..KA08/2728.

(iii) The Motor Accident Claims Tribunal, by its Award dated 5.2.2007 in MCOP.No.318 of 2003 directed the appellant to pay 65% of the total compensation amount assessed by the tribunal equivalent to Rs.1,53,215/- together with interest at the rate of 7.5% per annum from the date of claim till the date of

realisation and gave a finding that the accident happened on account of 35% contributory negligence on the part of the rider of the two wheeler bearing Registration No.TN 29/Z5116, in which, the 1st respondent was travelling as a pillion rider.

(iv) Aggrieved by the Award dated 5.2.2007, passed in MCOP.No.318 of 2003, the instant appeal has been filed by the Insurance Company disputing the liability.

3. Heard Mr. S. Jayasankar, learned counsel for the appellant and Mr.D. Selvaraju, learned counsel for the 1st respondent. The 2nd respondent(owner) of the lorry has remained exparte before the tribunal as well as this Court.

4. According to the learned counsel for the appellant, the tribunal has erroneously applied the multiplier method in assessing the compensation payable to the 1st respondent under the impugned award. According to him, the 1st respondent has suffered only 30% disability and has not proved before the tribunal that he would have suffered loss of earnings as a result of the injuries sustained by him due to the accident.

5. Per contra, learned counsel for the 1st respondent would submit that the 1st respondent had sustained fracture on his upper arm and there is a mal-union of bones and being a Tailor, the tribunal has rightly applied the multiplier method in assessing the compensation payable to the 1st respondent.

6. According to him, even though the 1st respondent had claimed in his claim petition that he was earning a monthly income of Rs.5000/- at the time of the accident, the tribunal has assessed the monthly income of the 1st respondent only at Rs.3000/- . Further, he would contend that the claim was made for Rs.3 lakhs, but the tribunal has awarded only a sum of Rs.2,35,700/- as the total compensation payable to the 1st respondent, out of which, the sum of Rs.1,53,215/- was directed to be paid by the appellant.

7. According to him, the compensation awarded to the 1st respondent is a just compensation.

8. This court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels observes as follows;

(a) it is an undisputed fact that the 1st respondent was a Tailor at the time of the accident. No contra evidence has been produced by the appellant before the tribunal to disprove the avocation of the 1st respondent.

(b) The injuries sustained by the 1st respondent as a result of the accident as referred to supra are also undisputed by the appellant before the tribunal;

(c) The 1st respondent has sustained fracture on the right arm and there is a mal- union of bones. Being a tailor, the injuries would certainly have resulted in effecting his regular avocation as a Tailor resulting in loss of income to him.

(d) The tribunal under the impugned award has awarded a sum of Rs.9,000/- towards loss of income during treatment, Rs.2000/- towards transportation cost, Rs.2000/- towards extra nourishment charges, Rs.2500/- towards medical expenses, Rs.3000/- towards attender charges, Rs.3000/- towards pain and sufferings and Rs.2,14,200/- towards loss of future earning capacity by applying the multiplier method.

9. In all, the tribunal has awarded a total compensation of Rs.2,35,700/- to the 1st respondent out of which, the appellant was directed to pay Rs.1,53,215/- being their share of contributory negligence.

10. In the considered view of this Court, the compensation awarded to the 1st respondent under the impugned award is a just compensation. In the light of the above observations, there is no merit in the instant appeal. Accordingly, the appeal is dismissed. Consequently, connected M.P.No.1 of 2010 and M.P.No.1 of 2011 are closed.

11. In the result,

(i) the Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The compensation awarded by the tribunal along with interest is confirmed.

(iii) It is represented that the entire award amount has already been deposited before the tribunal. The 1st respondent is permitted to withdraw the same on filing an appropriate application.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msr

To

Sub-Judge,
Motor Accidents Claim Tribunal,
Tirupathur, Vellore District.

+1cc to Mr.S.Jayasankar, Advocate, S.R.No.68390

+1cc to Mr.D.Selvaraju, Advocate, S.R.No.68919

C.M.A.No.1484 of 2010

rrs 08/10/2018