

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.09.2018

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No.2732 of 2009

The New India Assurance Co.Ltd.,
R.S. Puram Branch,
435, D.B. Road,
R.S.Puram, Coimbatore.

.. Appellant

-vs-

1.Chinnasamy
2.S.Radhakrishnan

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accidents Claims Tribunal and Fast Track Court No.4, Coimbatore at Thiruppur in M.A.C.T.O.P.No.1107 of 2000 dated 28.3.2008.

For Appellant : S. Jayasankar

For respondents: R1- served-No appearance
R2- Exparte.

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 28.3.2008 passed by the Motor Accident Claims Tribunal (Fast Track Court IV), Coimbatore at Thiruppur in M.A.C.T.O.P.No.1107 of 2000.

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

(i) The 1st respondent sustained injuries on 21.09.2000, as a result of an accident caused by a Maruti Car bearing Registration No.TN 38 J 7776 owned by the 2nd respondent and insured with the appellant.

(ii) The 1st respondent preferred a claim before the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.1107 of 2000 seeking a compensation of Rs.5,00,000/-.

(iii) The Motor Accident Claims Tribunal, by its Award dated 28.3.2008 passed in in M.C.O.P.No.1 of 2007, directed the appellant to pay the 1st respondent, a sum of Rs.1,72,320/- together with interest at the rate of 7.5% per annum from the

date of claim till the date of realisation.

3. Aggrieved by the Award dated 28.3.2008 passed in M.A.C.T.O.P.No.1107 of 2000, the instant appeal has been filed by the Insurance Company.

4 Heard Mr. S. Jayasankar, learned counsel for the appellant. Despite service of notice on the respondents and their names having been printed in the cause list, there is no appearance on their side.

5. According to the learned counsel for the appellant, the tribunal has erroneously awarded higher compensation of Rs.1,44,000/- towards disability of 40% for both bone fracture by applying the multiplier method.

6. According to him, the compensation awarded towards pain and sufferings, towards loss of income and towards extra nourishment charges and towards medical expenses ought not to have been awarded by the tribunal.

7. This Court has examined the impugned Award. The 1st respondent was aged 40 years and was an Iron Master at the time of the accident. In his claim petition, the 1st respondent has disclosed that he was earning a monthly income of Rs.4,000/-. As a result of the accident, the 1st respondent sustained the following injuries:

(a) Lacerated injury measuring 7 x 3 cm in the lower 1/3rd of right leg with bone piece about 5cm x 3cm projecting out through the wound.

2. Abrasion on the left side of the lower abdomen measuring 3 x ½ cm.

3. Abrasion at the left side of upper ½ of the back of the chest measuring 2 x 2 cm.

8. The 1st respondent has also sustained fracture in both the bones of right leg. The 1st respondent has also filed the disability certificate which was marked as Ex.A.6 which discloses that the disability suffered by him was 40%. No contra evidence has been produced by the appellant to disprove the disability suffered by the 1st respondent. As an Iron Master, the 1st respondent would certainly have suffered loss of earning capacity due to the injuries sustained by him on account of the accident.

9. In the considered view of this Court, the Tribunal has rightly applied the multiplier method in assessing the compensation payable to the 1st respondent. The compensation awarded under the heads medical expenses, pain and sufferings,

loss of income and extra nourishment charges by the tribunal under the impugned award is also not in accordance with the settled principles. This Court does not find any infirmity in the Award passed by the tribunal.

10. In the result, there is no merit in this appeal. Accordingly, the appeal is dismissed. No costs. Consequently, connected M.P.No.1 of 2009 is closed.

11.It is represented that the compensation awarded by the tribunal has already been deposited. The 1st respondent is permitted to withdraw the same lying to the credit of MCOP on filing an appropriate application.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msr

To

1.The Motor Accidents Claims Tribunal and Fast Track Court No.4,
Coimbatore at Thiruppur.

2.The Record Clerk,
VR Section,
High Court,
Madras.

C.M.A. No.2732 of 2009

CP(CO)
GSP(02/11/2018)

सत्यमेव जयते

WEB COPY