

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1508 of 2011

and

M.P.No.1 of 2011

The Divisional Manager
New India Assurance Company Limited,
No.69/70, Sheikpet Nadu Street,
Kancheepuram.

... Appellant/2nd Respondent

...Vs...

1.M.Gopi

2.M.Manickam

(Second respondent set ex-parte in
the lower Court and hence, notice is dispensed with)

.. Respondents/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 20.10.2010 passed in M.C.O.P.No.56 of 2009, on the file of the Motor Accidents Claims Tribunal, Sub Judge, Kancheepuram.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.S.Gopinathan for R1
R2 - Given up

JUDGMENT

This appeal is filed by the New India Assurance Company Limited against the Award dated 20.10.2010 passed by the Motor Accidents Claims Tribunal (Sub-Judge), Kancheepuram in M.C.O.P.No.56 of 2009.

2. On 29.01.2008, the first respondent/claimant was riding a motor-cycle and he was proceeding towards Athur from Walajabad and when he was nearing M.S.Modern Rice Mill at Puliyambakkam Village on the Kanchipuram-Chengalpattu Road, a speeding lorry belonging to the second respondent herein hit the first respondent/claimant, as a result of which, the first respondent/claimant sustained multiple grievous injuries. Immediately, he was rushed to the Government Hospital, Kancheepuram.

3. The present appellant/Insurance Company filed a counter affidavit before the Tribunal denying the allegations of the first respondent/claimant.

4. The Tribunal, after analysing the entire evidence on record, awarded a compensation of Rs.5,41,219/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Aggrieved by the same, the present

appeal is filed by the Insurance Company.

5. Mr.R.Sivakumar, learned counsel appearing for the appellant-Insurance Company contended that since the first respondent/claimant hit the parked lorry from behind, the appellant-Insurance Company is not liable to pay the compensation amount to the first respondent/claimant.

6. The contention of the first respondent/claimant is that the driver of the lorry applied sudden brakes in order to take a right turn on the road, and that the rough sketch Ex.P-22 also shows that the accident spot is on the middle of the road. Therefore, the contention of the learned counsel for the appellant-Insurance Company that since the first respondent/claimant hit the parked lorry from behind, the first respondent/claimant alone was rash and negligent in driving his motor-cycle, cannot be accepted.

7. The next contention of the learned counsel for the appellant-Insurance Company is that the award amount of Rs.5,41,219/- is on the higher side.

8. The Doctor who was examined as P.W.2 has assessed the permanent disability as 70%. The first respondent-claimant, who was owning a Saloon, has sustained injury on his head. It is not the case of the first respondent/claimant that he lost his earning capacity on account of the accident. Therefore, applying the principles laid down by the Supreme Court in the case of Raj Kumar Vs. Ajay Kumar, reported in 2011 (1) SCC 343, multiplier method cannot be adopted to the case on hand. Therefore, the Tribunal has committed a gross error in applying the multiplier method and at the most, only a sum of Rs.3,000/- per percentage can be awarded to the claimant for the permanent disability, which would work out to Rs.2,10,000/-. (70 x 3,000)

9. Apart from the above, the first respondent/claimant is entitled to Rs.10,000/- each towards the transportation expenses, extra-nourishment and pain and suffering respectively (totally Rs.30,000/-).

10. The first respondent/claimant has also produced medical bills to the tune of Rs.1,45,619/-. The Tribunal has awarded a sum of Rs.1,00,000/- towards future medical expenses. The first respondent/claimant has marked a certificate (Ex.P-19) issued by Dr.Santhosh Joseph, Professor and Head of Department of Radiology and Imaging Sciences, Sri Ramachandra Medical Centre, Chennai, as per which, the approximate expenditure for the future medical expenses is around Rs.5 lakhs. It is pertinent to point out that the Doctor who has issued Ex.P-19, has not been examined by the first respondent/claimant before the Tribunal to prove the contents of Ex.P-19. However, the Tribunal has awarded a sum of Rs.1 lakh towards future medical expenses, which in the opinion of this Court, is on the higher side. Considering the facts and circumstances of the present case, awarding a sum of Rs.10,000/- towards future medical expenses, would meet the ends of justice.

11. Thus, the first respondent/claimant is entitled to a total compensation of Rs.3,95,619/- (Rupees three lakhs ninety five thousand six hundred and nineteen only) together with interest @ 7.5% p.a. from the date of claim petition till the date of payment.

12. It is brought to the notice of this Court that the appellant/Insurance Company has already deposited Rs.2 lakhs so far. Now, the appellant/Insurance Company is directed to deposit the balance amount of compensation now being awarded, together with interest @ 7.5% p.a. from the date of claim petition till the date of payment, within a period of four weeks from the date of receipt of a copy of this judgment.

13. With the above observations and directions, the appeal is disposed of. No costs. The Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Sub-Judge (Motor Accidents Claims Tribunal), Kancheepuram.
2. The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.S.Gopinathan, Advocate sr.no.79509

+1cc to Mr.R.Sivakumar, Advocate sr.no.78649

C.M.A.No.1508 of 2011

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