

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.2033 of 2015

Divisional Manager,
United India Insurance Co. Ltd.,
No.46, Katpadi Salai,
Vellore.

.. Appellant

vs.

1. Baskar

2. The Commissioner,
Thiruvannamalai Municipality,
Thiruvannamalai.

.. Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.01.2014 made in M.C.O.P.No.573 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruvannamalai.

For Appellant : Mr.S.Arunkumar
For R1 : No Appearance
For R2 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 09.01.2014 made in M.C.O.P.No.573 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruvannamalai. सत्यमेव जयते

2.The first respondent is claimant in M.C.O.P.No.573 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruvannamalai. He has filed the above claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 31.08.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the driver of the lorry belonging to the second respondent is responsible for the accident, appellant as the insurer of the lorry is liable to pay the compensation to the first respondent and awarded a sum of Rs.2,56,000/- as compensation to the first respondent.

4. Against the said award dated 09.01.2014 made in M.C.O.P.No.573 of 2013, the appellant/Insurance Company has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the first respondent has failed to prove that the lorry belonging to the second respondent was involved in the accident beyond doubt. The Tribunal has granted a huge sum of compensation contrary to the evidence produced by the first respondent. The Tribunal erred in fixing the disability solely on the evidence of P.W.2. The Tribunal failed to consider the difference between the disability to whole body and particular part of the body. The amount awarded by the Tribunal towards loss of earning power is erroneous and prayed for setting aside the award of the Tribunal.

6. Though the first respondent/claimant entered appearance through counsel, there is no representation on behalf of the first respondent. Though the notice was served on the second respondent and his name is printed in the cause list, there is no representation on behalf of the second respondent either in person or through counsel.

7. Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

8. According to the learned counsel appearing for the appellant, the first respondent failed to prove the involvement of the vehicle belonging to the second respondent insured with the appellant. From the materials available on record, it is seen that the first respondent has marked Ex.P1/F.I.R., wherein it has been stated that the lorry belonging to the second respondent caused the accident. In the F.I.R., the name of the driver and Registration number was not mentioned. After investigation, the police has filed a charge sheet, which was marked as Ex.P4. The Tribunal considering Exs.P1 and Ex.P4 and evidence of P.W.1, held that the driver of the lorry belonging to the second respondent is responsible for the accident. There is no error in the said findings warranting interference by this Court.

9. As far as the quantum of compensation is concerned, first respondent examined the Doctor as P.W.2 and P.W.2 has deposed that the first respondent suffered 35% of the disability. According to the learned counsel appearing for the appellant, the Tribunal erred in accepting the oral evidence of P.W.2 and held that the appellant has not let in any evidence to disprove the evidence of P.W.2. From the materials on record, it is seen

that the Tribunal has rightly accepted the evidence of P.W.2 and Ex.P3/wound certificate, Ex.P5/permanent disability certificate and Ex.P6/X-rays and awarded a sum of Rs.70,000/- towards permanent disability at Rs.2,000/- per percentage. The same is not excessive. As far as the sum of Rs.1,50,000/- awarded by the Tribunal under the head of loss of earning capacity is concerned, the Tribunal has held that due to 35% of disability, the appellant has suffered 15% towards loss of earning capacity and awarded a sum of Rs.1,50,000/- towards loss of earning capacity. But the Tribunal has not given any calculation for arriving at Rs.1,50,000/-. The said amount is excessive and the same is hereby reduced to Rs.50,000/-. The amounts awarded by the Tribunal under all the other heads are just and fair and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportation	5,000	5,000	confirmed
2.	Extra nourishment	2,000	2,000	confirmed
3.	Permanent disability	70,000	70,000	confirmed
4.	Loss of income during treatment period	9,000	9,000	confirmed
5.	Pain and suffering, mental agony	20,000	20,000	confirmed
6.	Loss of earning capacity	1,50,000	50,000	Reduced
	Total	2,56,000	1,56,000	Reduced by Rs.1,00,000/-

10. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.2,56,000/- awarded by the Tribunal is hereby reduced to Rs.1,56,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/Insurance Company is

directed to deposit the modified award amount, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant/first respondent is permitted to withdraw the award amount with accrued interest, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.573 of 2013, if the entire award amount has already been deposited by them. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gbi/kj

To

1.The Motor Accidents Claims Tribunal,
Sub Judge, Thiruvannamalai.

2.The Section Officer,
V.R.Section,
High Court, Chennai.

+1 cc to M/s.S.Arunkumar, Advocate Sr.No.77453

C.M.A. No.2033 of 2015

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