

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.580 of 2016 and
C.M.P.No.4834 of 2016

IFFCO - TOKIO
General Insurance Company Ltd.,
IFFCO Sadan, C-1, District Centre,
Saketh, New Delhi - 110 017.

..... Appellant/2nd Respondent

-vs-

1.Sathish 1st Respondent/Petitioner

2.C.Krishnappa 2nd Respondent/1st Respondent
(R2 Set Ex.Parte before the Trial Court)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment made in M.C.O.P.No.168 of 2013 dated 31.07.2015 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Hosur.

For Appellant : Ms.K.Saraswathi

For Respondents: Mr.PA.Sudesh Kumar
for R1

set Exparte before the Trial Court-for R2

J U D G M E N T

[Judgment of the Court was made by
R.SUBRAMANIAN, J.]

Challenging the Award granting a sum of Rs.20,44,600/- for the injuries suffered by the claimant, the Insurance Company has come up with this appeal.

2. The accident occurred on 11.02.2013. It was a collision between two two-wheelers. According to the claimant, the two wheeler driven by the second respondent came from behind and dashed against the vehicle, in which he was proceeding. Whereas, according to the complaint lodged by the brother of the

second respondent, when the second respondent was attempting to take a right turn, the claimant came from behind and hit against the vehicle and suffered injuries. Therefore, according to the complainant, negligence was on the part of the claimant. The Tribunal on an analysis of the evidence on record concluded that the entire negligence was on the part of the second respondent inasmuch it was found that he has taken a right turn without giving appropriate signal which resulted in the accident.

3. Though the learned counsel for the Insurance Company would try her best to invite us to upset the finding of fact recorded by the Tribunal, we do not find any material which would enable us to upset the finding of fact recorded by the Tribunal regarding negligence. On the quantum, the learned counsel for the appellant would contend that the Tribunal has taken monthly income as Rs.6,500/- without any evidence. It is borne out by records that the claimant had completed ITI Certificate course. He is a skilled worker. Hence, we do not find that the income adopted by the Tribunal is on the higher side. The Tribunal has added 50% towards future prospects. The claimant was employed in a private factory. Therefore, adopting 50% towards future prospects is not correct. The Tribunal should have added only 40% towards future prospects.

4. Further, the disability of the claimant has been assessed at 60%. It could be gathered from the evidence that the claimant has suffered very serious head injury, which has resulted in memory loss. Therefore, the disability assessed by the Tribunal is also reasonable. Thus, worked out, the pecuniary loss would be $\text{Rs.}9,100 \times 12 \times 18 \times 60/100 = \text{Rs.}11,79,360/-$

5. The Tribunal has awarded Rs.5,93,000/- towards medical expenses as per the bills; Rs.1,00,000/- towards pain and suffering; Rs.50,000/- towards loss of marriage prospects; Rs.10,000/- for nutrition; Rs.10,000 for Transport expenses and Rs.18,000/- towards Attender charges. The compensation awarded by the Tribunal on these heads is sustained.

6. Thus, the total compensation would be as follows:

i) Loss of Income	: Rs. 11,79,360/-
ii) Medical Expenses	: Rs. 5,93,000/-
iii) Pain and Suffering	: Rs. 1,00,000/-
iv) Marriage prospects	: Rs. 50,000/-
iii) Extra nourishment	: Rs. 10,000/-
iv) Transport Expenses	: Rs. 10,000/-
v) Attender Charges	: Rs. 18,000/-
Total	: Rs. 19,60,360/-
(Rounded off to Rs.19,60,000/-)	

7. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is modified and reduced to Rs.19,60,000/- from Rs.20,44,600/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The appellant Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with interest within a period of four weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit, the claimant is permitted to withdraw the entire amount by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on filing of such application.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal (Subordinate Judge), Hosur.

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

+1cc to Mr.C.R.Krishnamoorthy, Advocate sr.no.59744

+1cc to Mr.PA.Sudesh Kumar, Advocate sr.no.58719

CMA No.580 of 2016

nr 30/10/2018