

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.01.2018

CORAM

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2066 of 2017
and
CMP.No.11058 of 2017

Reliance General Insurance Co. Ltd.,
Rais Towers, Plot No.2054,
Second Avenue, Anna Nagar,
Chennai - 600 040. ...Appellant/2nd Respondent

...vs..

1.D.Satheesh Kumar
2.M.Alamelu ... Respondents/Petitioner &
1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and decreetal order dated 28.04.2016 made in MCOP.No.7001 of 2013 on the file of the Motor Accident Claims Tribunal/II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar

For Respondent : Mr.Terry Chellaraja for R-1

JUDGMENT

For the sake of convenience, the parties are referred to in this judgment as arrayed in the MCOP.

2. The Insurance Company/2nd respondent is the appellant before this Court. Challenging the compensation of Rs.5,35,000/- awarded to the petitioner/first respondent herein for the disability sustained in the accident, which took place on 22.10.2013, while the minor petitioner/first respondent was walking on Kancheepuram High Road near JSP Hospital, Chengalpattu, as the motor cycle bearing Registration No.TN-21-AM-0527, driven in a rash and negligent manner dashed against the minor petitioner, resulting in multiple grievous injuries all over the body. Therefore, the petitioner filed a claim petition before the Tribunal seeking compensation of

Rs.10,00,000/- for the injuries sustained by him.

3. On the other hand, opposing the claim of the petitioner, the second respondent/Insurance Company filed counter disputing the manner of accident and also contested that the injuries are simple in nature and the claim of the petitioner is exorbitant. Thus, the second respondent/Insurance company sought for dismissal of the claim petition.

4. To substantiate the claim before the Tribunal, the petitioner/injured was examined himself as P.W.1 and Doctor was examined as P.W.2 and produced documents Exs.P1 to P10. On the other hand, no oral or documentary evidence was let in by the respondent/appellant Insurance company.

5. On the basis of the materials available before it, the trial Court concluded that the rider of the motor cycle was responsible for the accident and as the petitioner has sustained grievous injury as evidenced by the medical evidence given by P.W.2 and the documents Exs.P2, 3 and 5 as well as X-rays marked as Ex.P8 and P9, concluded that the injured has suffered grievous injuries. Further, on the basis of P.W.2, the Doctor evidence and Ex.P10 disability certificate issued by P.W.2, concluded that the injured suffered a fracture and 45% permanent disability, awarded total sum of Rs.5,35,000/- as compensation. Aggrieved over the said finding of the Tribunal, the Insurance Company/2nd respondent has come forward with this appeal.

6. The learned counsel appearing for the appellant/Insurance Company submits that only the quantum of compensation is dispute. According to him, the disability fixed at 45% is on the higher side and further as the victim is a minor boy and the injuries sustained by him is minimal, he sought for deduction of the award amount. It is further sated by the appellant/Insurance Company that the compensation given for permanent disability is on the higher side and it is to be reduced. Thus, the learned counsel for the appellant sought for re-fixation of the compensation amount by reducing the same.

7. Admittedly, the learned counsel for the appellant did not agitate the aspect of negligence or liability to pay the compensation. The Tribunal on proper appreciation of the evidence available before it found the rider of the motor cycle bearing registration No.TN-21-AM-0527 was responsible for the accident, since the motor cycle was driven in a rash and negligent manner. The said conclusion of the Tribunal is confirmed.

8. The only contention of the learned counsel for the appellant/ Insurance Company is that the disability compensation

fixed by the Tribunal is on the higher side and seeks to reduce the same. It is evident from Exs.P3 and P5 discharge summary as well as Ex.P6 Out Patient treatment record issued by Parvathi Hospital that the injured suffered grievous injuries due to the accident. As per the evidence of P.W.2, the Doctor, due to the accident, the bone in both legs of the injured has fractured and it will be difficult for him to sit down. According to him, the victim has sustained grievous injury and consequently, permanent disability of 45%. As the victim is a minor boy, the Tribunal accepted the medical evidence and concluded that the disability is 45% and awarded a sum of Rs.4,00,000/- towards compensation for continuous permanent disability. As stated above, the said sum alone is disputed by the appellant herein. In such circumstances, considering the nature of injury suffered by the victim as evidenced by Ex.P10 disability certificate and keeping in mind the medical evidence of P.W.2, Doctor who stated that the permanent disability is 45%, this Court is of the view that it will be appropriate to award a sum of Rs.3,00,000/- instead of Rs.4,00,000/- as compensation for permanent disability. Likewise, the trial Court has awarded a sum of Rs.25,000/- for transport expenses. However, considering the period of treatment and number of days he was treated as in patient, this Court is of the view that it will be appropriate to give Rs.10,000/- towards transport expenses instead of Rs.25,000/- awarded by the Tribunal. Similarly, the trial Court has awarded a sum of Rs.50,000/- as compensation for pain and sufferings. Considering the nature of injuries and age of the victim, this Court is of the view that awarding a sum of Rs.40,000/- for pain and sufferings will be sufficient. In other aspects, the amount awarded by the Tribunal under the other heads, namely, Extra nourishment for Rs.10,000/-, Medical expenses Rs.30,000/- and attender charges Rs.10,000/- are reasonable and hence they are confirmed. Thus, as per detail given below a sum of Rs.4,00,000/- is awarded as compensation instead of Rs.5,35,000/- awarded by the Tribunal and the same is as follows:-

SL No.	Heads	Amount awarded
1.	Transport expenses	10,000.00
2.	Extra Nourishment	10,000.00
3.	Medical Expenses	30,000.00
4.	Attendant Charges	10,000.00
5.	Pain and sufferings	40,000.00
6.	Permanent Disability	3,00,000.00
	Total	4,00,000.00

9. In view of the above modification, the appellant Insurance Company is directed to deposit the entire award amount of Rs.4,00,000/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The victim is minor and hence the Tribunal is directed to invest the award amount in any one of the Nationalized Bank in a fixed deposit scheme till he attain majority and the father of the claimant/minor boy, namely, Devadass is directed to withdraw the accrued interest once in three months. The Civil Miscellaneous Appeal is allowed in the above terms. No costs. Consequently, connected CMP is closed.

rrg

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
II Court of Small Causes,
Chennai

+1cc to Mr.S.Arunkumar, Advocate SR.No.643/18
+1cc to Mr.V.Velu, Advocate Sr.No.708/18

SR(CO)
sm:13.2.2018

सत्यमेव जयते C.M.A.No.2066 of 2017

WEB COPY