

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1502 of 2018
and
CMP.Nos.11957 and 17410 of 2018

The Branch Manager,
United India Insurance Co. Ltd.,
PPS, Complex, First Floor
Mettur Main Road, Omalur,
Salem District-636 456. Appellant/2nd Respondent

Vs

1.Pathmanaban
2.S.Sathia Seelan ...Respondents/Petitioner/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 21.09.2017 made in M.C.O.P.No.140 of 2016 on the file of the Motor Accident Claims Tribunal (Special District Judge), Dharmapuri.

For Appellant : Mr.T.Ravichandran

For Respondents : Mr.D.Ramesh Kumar
for 1st respondent

JUDGMENT

Calling into question the award dated 21.09.2017 passed in M.C.O.P.No.140 of 2016 by the Motor Accidents Claims Tribunal (Special District Judge), Dharmapuri, the present civil miscellaneous appeal is filed.

2. Brief facts are that on 14.6.2015, the first respondent was proceeding in his two wheeler bearing registration No.TN-29 AM 2418 on Kalegoundanoor - Thinnor road and while he was nearing one Chandran's house, a Bajaj Pulsar two wheeler bearing registration No.TN 30 Z 8543 driven by its rider in a rash and negligent manner dashed against the first respondent's two wheeler. Due to the impact, the first respondent sustained

grievous injuries over the right foot, right leg, right knee and also multiple injuries all over the body. Immediately, the first respondent was taken to Dharmapuri Medical College Hospital for treatment and thereafter, he was admitted in Ganga Medical Centre and Hospital, Coimbatore, where he had taken treatment from 15.6.2015 to 23.06.2015. Regarding the accident, a criminal case in Crime No.195 of 2015 was registered by Pennagaram Police Station under Sections 279 and 337 IPC. At the time of accident, the first respondent was earning Rs.20,000/- per month by doing duck business. The second respondent is the owner of the Bajaj Pulsar and the appellant is the insurer. The insurance policy was valid from 11.9.2014 to 10.9.2015. Stating that the accident occurred due to rash and negligent driving of the rider of the Bajaj Pulsar, the first respondent has filed the claim petition claiming compensation of Rs.15,00,000/-.

3. Denying the manner of accident, the appellant insurance company filed counter stating that the rider of Bajaj Pulsar bearing registration No.TN-30 Z 8543 ride his vehicle slowly and carefully and the first respondent alone ride his two wheeler rashly and negligently and without giving any signal suddenly turned towards wrong side and dashed against the second respondent's vehicle coming from the opposite side. It is stated that the rider of the first respondent's two wheeler had no valid driving licence and also there is no valid insurance policy. The appellant has also denied the age, monthly income and occupation of the first respondent and prayed for dismissal of the claim petition.

4. Before the Tribunal, the first respondent examined himself as P.W.1 and Exs.P1 to P10 were marked. No oral and documentary evidence was adduced on the side of the appellant.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the rider of the second respondent's two wheeler bearing registration No.TN-30 Z 8543 and the appellant being the insurer of the second respondent motorcycle is liable to pay the compensation. The Tribunal awarded total compensation of Rs.4,58,400/-. Aggrieved by the same, the appellant insurance company has filed the present appeal.

6. I heard Mr.T.Ravichandran, learned counsel for the appellant and Mr.D.Ramesh Kumar, learned counsel for the first respondent and perused the entire materials available on record.

7. Challenging the award, the learned counsel for the appellant submitted that the Tribunal ought to have considered the contributory negligence on the part of the first respondent,

who alone invited the accident at his own fault. As far as the quantum of compensation awarded by the Tribunal is concerned, the learned counsel submitted that computation of calculation in adopting multiplier method is higher side and the Tribunal ought to have granted the lump sum compensation. In any event, the total compensation of Rs.4,58,400/- awarded by the Tribunal is exorbitant.

8. Per contra, reiterating the findings of the Tribunal, the learned counsel for the first respondent submitted that ignoring the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of rider of Bajaj Pulsar. As far as quantum of compensation is concerned, the learned counsel for the first respondent submitted that the total compensation awarded by the Tribunal is just and reasonable and therefore, there is no necessity to interfere with the same.

9. It is not necessary for this Court to narrate entire facts in detail qua negligence and liability. It is for the reasons that these things are recorded by the Tribunal that the appellant is liable to pay the compensation to the first respondent. Since the aforesaid finding of the Tribunal is based on evidence and also none of these findings are under challenge, this Court is of the considered view that the finding of the Tribunal that the appellant to pay the compensation is confirmed. The only point that arises for consideration is whether the compensation awarded by the Tribunal is just and reasonable.

10. As far as the quantum of compensation is concerned, the Tribunal has taken the monthly income of the first respondent at Rs.6,000/- and adopting multiplier "15", awarded Rs.2,70,000/- towards loss of earning power.

11. According to the first respondent, at the time of accident he was aged 37 years and was earning Rs.20,000/- by doing duck business. Admittedly, there was no proof to show that the first respondent was earning Rs.20,000/- per month. However, the Tribunal has taken the monthly income of the first respondent at Rs.6,000/-.

12. A person doing duck business would not able to get Rs.6,000/- per month. In the present case, the mode of selling duck by the first respondent has not been clearly stated by him and there was also no record to establish the same. Therefore, in the absence of any proof, this Court feels that Rs.6,000/- taken by the Tribunal as monthly income is slightly on the higher side and it would be appropriate to take the monthly income of the first respondent at Rs.4,000/-.

13. According to the appellant, the Tribunal erred in adopting multiplier method and it ought to have granted lump sum only under the head loss of earning power. In the accident, the first respondent sustained injuries on the right leg, right foot, right knee and injuries all over the body. Ex.P2 is the discharge summary issued by Ganga Medical Centre and Hospital, Coimbatore. On a perusal of Ex.P2, it seen that the first respondent suffered Grade II open fracture in the right proximal, communitied tibial pleateau fracture in the right knee, fracture of proximal 3rd shaft of fibula and fracture of 2nd metatarsal bone in the right foot. He was treated as inpatient from 15.6.2015 to 23.6.2015 and during the period of treatment, the first respondent underwent surgery also.

14. In the case on hand, the first respondent was referred to the Medical Board to assess the percentage of disability suffered by him. Accordingly, the Medical Board examined the first respondent and issued Ex.P10-disability certificate assessing the disability at 25%. Taking note of the disability suffered by the first respondent, the Tribunal has adopted multiplier method while determining the compensation. Considering the nature of injuries sustained by the first respondent, the disability caused to the first respondent is likely to have impact on his earning capacity. In personal injury cases for ascertaining compensation for permanent disability and loss of earning power, Court could adopt multiplier method and thus, the Tribunal was right in adopting multiplier method.

15. Taking the monthly income of the first respondent at Rs.4,000/- and adopting multiplier "15", the loss of earning power is calculated at Rs.1,80,000/- (Rs.4,000 x 12 x 15 x 25/100).

16. As far as other pecuniary loss is concerned, the Tribunal awarded Rs.70,400/- for medical expenses; Rs.24,000/- for loss of income; Rs.10,000/- for attender charges; Rs.14,000/- for travelling charges; Rs.20,000/- for extra-nourishment. Since amounts awarded under the aforesaid heads are reasonable, the same are maintained.

17. As far as non-pecuniary loss is concerned, the Tribunal awarded Rs.25,000/- towards pain and suffering and another Rs.25,000/- for loss of amenities. Considering the nature of injuries sustained and the period of treatment undergone by the first respondent, Rs.25,000/- awarded by the Tribunal for pain and suffering is maintained. However, Rs.25,000/- awarded by the Tribunal towards loss of amenities is reduced to Rs.15,000/-.

18. In view of the above discussion, the compensation of Rs.4,58,400/- awarded by the Tribunal is reduced to Rs.3,58,400/- as under:

Heads	Rs.
Loss of earning power (Rs.4000x12x15x25/100)	1,80,000.00
Medical expenses	70,400.00
Pain and suffering	25,000.00
Extra-nourishment	20,000.00
Transport charges	14,000.00
Attender charges	10,000.00
Loss of income	24,000.00
Loss of amenities	15,000.00
Total	3,58,400.00

19. In the result,

(a) The Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.4,58,400/- awarded by the Tribunal in M.C.O.P.No.140 of 2016, dated 21.09.2017 is reduced to Rs.3,58,400/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(b) It is stated that the appellant had deposited 50% of the compensation awarded by the Tribunal. The appellant is directed to deposit the balance compensation amount with interest within a period of eight weeks from the date of receipt of a copy of this judgment.

(c) The first respondent is permitted to withdraw the amount lying in the credit of M.C.O.P.No.140 of 2016, on filing proper application before the Tribunal.

(d) No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

vs

To

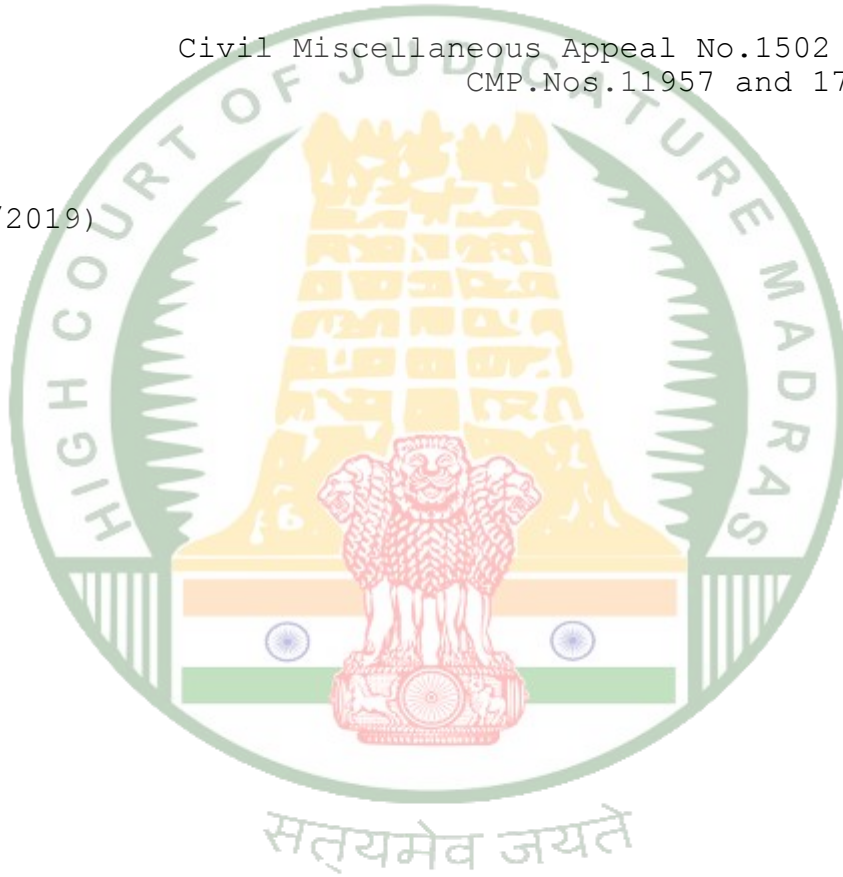
1. The Motor Accidents Claims Tribunal,
Special District Judge, Dharmapuri.
2. The Section Officer, VR Section,
High Court, Madras

+1cc to Mr.T.Ravichandran, Advocate SR.No.73528

+1cc to Mr.D.Ramesh Kumar, Advocate SR.No.73388

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