

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1785 of 2008

And

M.P.No.1 of 2008

Cholamandalam MS General Insurance Co. Ltd.,
No.234, N.S.C. Bose Road,
Chennai - 1. ...Appellant/2nd Respondent

Vs.

1.G.Kanagaraj ...Ist Respondent/Petitioner

2.M.Perumal ...2nd Respondent/Ist Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.145 of 2008, dated 28.01.2008 on the file of the Motor Accidents Claims Tribunal, Addl. District Court, Fast Track Court, Thirupattur.

For Appellant : Mr.N.Vijayaraghavan

For Respondents: Mr.V.Kumaravelan for R1

: R2 - No appearance

J U D G M E N T
सत्यमेव जयते

The instant appeal has been filed challenging the Judgement and degree passed by the Motor Accident Claims Tribunal (Additional District, Fast Track Court, Thirupattur) in MCOP No.145 of 2008. The Insurance Company is aggrieved by the quantum of compensation awarded to the first respondent by the Tribunal.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The first respondent was a barber by profession and he met with an accident on 16.01.2005 while he was proceeding in his TVS X1 Super Moped along with the pillion rider caused by

another TVS 50 XL moped bearing Registration No.TN24 3547 belonging to the second respondent and insured with the Appellant. As a result of the accident, the first respondent suffered injuries and he made a claim before the Motor Accidents Claims Tribunal seeking a compensation of Rs.6,00,000/- together with interest at 12% per annum from the date of claim till date of realization.

(ii)The Tribunal by its Award dated 28.01.2008, directed the Appellant to pay the first respondent a sum of Rs.59,000/- together with interest at 7.5% per annum from the date of claim till date of realization and also awarded cost of Rs.1,000/-.

3.Aggrieved by the Award dated 28.01.2008, the instant appeal has been filed by the Insurance Company.

4.Heard, Mr.N.Vijayaraghavan, learned Counsel for the Appellant and Mr.V.Kumaravelan, learned Counsel for the first respondent.

5.The learned Counsel for the Appellant submitted that:

(a)The Tribunal has grossly erred in holding that fault was entirely on the part of the rider of two wheeler insured with the Appellant.

(b)The Tribunal ought to have gone by the finding in the connected case in MCOP No.124/2005 where in it was held that riders of both vehicles were equally at fault and hence 50% of the amount fixed was liable to be deducted for contributory negligence.

(c)The Tribunal has erred in giving a different finding on negligence in the present case, more so when the judgement in the connected case was also marked in evidence.

(d)The Tribunal ought to have absolved the Appellant of any liability when it was found that the 2nd Respondent's vehicle was driven without a valid licence.

(e)No documents were filed by the first respondent before the Tribunal to establish that he was a barber earning a monthly income of Rs.5,000/-.

(f)No discharge report was filed by the Appellant before the Tribunal to prove the period of hospitalisation and the nature of medical treatment underwent by the first respondent.

6.The learned Counsel further submitted that due to the contributory negligence on the part of the first respondent as evidenced by the findings of the Tribunal in a connected case MCOP No.124 of 2005, wherein it was held that both the riders were equally at fault, the Appellant is not liable to pay the awarded amount to the first respondent/claimant without any deduction towards contributory negligence.

7. Per contra, the learned Counsel for the first respondent submits that due to the accident, the first respondent/claimant who was a barber was unable to run the shop since no customer was willing to come to his shop due to the facial disability caused to the first respondent/claimant on account of the accident. In such circumstances, according to learned counsel for the first respondent/claimant, the first respondent has suffered loss of income, which was not adequately compensated by the Tribunal.

8. The learned Counsel for the first respondent/claimant further submits that the multiplier formula will have to be applied in the case of the first respondent which the Tribunal did not apply. According to the learned Counsel for the first respondent/claimant, the amount awarded by the Tribunal is a meagre and inadequate amount and not commensurate with the actual loss suffered by the first respondent/claimant on account of the accident.

9. This Court after having considered the materials available on record and after hearing the submissions of respective Counsels observes the following:

(a) No serious dispute has been raised by the Appellant on the percentage of disability caused to the first respondent/claimant on account of the accident. It is an undisputed fact that 40% disability was caused to the first respondent on account of the accident.

(b) The Tribunal has only awarded a sum of Rs.59,000/- as compensation to the first respondent/claimant even though, the monthly income disclosed by the first respondent/claimant in his claim was Rs.5,000/- which has not been disproved by the Appellant through documentary and oral evidence. It is also an admitted fact that the Appellant had to undergo hospitalisation on account of the accident. Though, there may be contributory negligence on the part of the first respondent/claimant, the amount awarded by the Tribunal in favour of the first respondent/claimant was only a sum of Rs.59,000/- which is not an excessive amount.

9. Considering the nature of the accident and the injury caused to the first respondent, this Court is of the considered view, the Tribunal has not awarded any excess amount as compensation to the first respondent/claimant. The claim of the first respondent/claimant for enhancement of the Award cannot be granted by this Court at this stage.

10.No appeal has been filed by the first respondent/claimant against the judgement and degree dated 28.01.2008, seeking for enhancement of the Award amount. The accident is said to have taken place on 16.01.2005 and now we are in the year 2018. At this stage, this Court cannot accede to the request of the first respondent/claimant for enhancement of compensation without an appeal having been filed seeking enhancement. Only in exceptional circumstances, enhancement can be granted without an appeal having been filed by the claimant. This is not a fit case for granting any enhancement.

11.In the result, this Court is of the considered view that there is no merit in the instant appeal filed by the Insurance Company. Accordingly, the appeal shall stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

tsg/pam

To

The Additional District Judge,
Motor Accidents Claims Tribunal,
Addl. District Court, Fast Track Court,
Thirupattur.

+1cc to M/S.M.B.Gopalan Associates, Advocate Sr.55763
+1cc to Mr.V.Kumaravelan, Advocate Sr.56161

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M.P.No.1 of 2008

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