

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.08.2018
CORAM
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2992 of 2008
&
MP.NO.1 of 2008

The Branch Manager,
The Oriental Insurance Company Ltd.,
B.O.No.28, Salem Road,
Coonoor

.. Appellant/2nd Respondent

..Vs..

1.Chinnasamy alias Sivasamy ... 1st Respondent/Petitioner

2.C.A.Rajendran .. 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 23.06.2008 passed in M.C.O.P.No.1133 of 2005 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.V, Coimbatore at Tiruppur.

For Appellant : Mr.R.Sivakumar

For Respondent 1: Mr.M.Selvam
R2-Experte

J U D G M E N T

The instant appeal has been filed by the insurance company challenging the award dated 23.06.2008 passed by the Motor Accident Claims Tribunal, Fast Track Court-V, Coimbatore at Tiruppur in MCOP. No. 1133 of 2005.

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

2. The first respondent was an agricultural labourer (coolie), earning daily wages and he suffered injuries on account of accident caused by a lorry owned by the second respondent bearing registration No.TN28-B-3265 which is insured with the Appellant. The first respondent made a claim of Rs.5,00,000/- towards compensation on account of injuries

suffered by him due to the above referred accident against the Appellant, before the Motor Accident Claims Tribunal, Fast Track Court-V, Coimbatore at Tiruppur. The Motor Accident Claims Tribunal by its judgment and decree dated 23.06.2008 directed the Appellant to pay the first respondent a sum of Rs.2,21,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

3. Aggrieved by the award dated 23.06.2008, the instant appeal has been filed by the insurance company.

4. Heard Mr.R.Sivakumar, learned counsel for the Appellant and Mr.M.Selvam, learned counsel for the first respondent.

5. According to the learned counsel for the Appellant, the grounds raised for challenge in the instant appeal are as follows:

a) The Tribunal has erred in coming to the conclusion that the accident occurred only due to the rash and negligent driving by the driver of the lorry bearing registration No.TN28-B-3265 and he failed to take note of the fact that there was a contributory negligence on the part of the driver of the van also, in which the first respondent was travelling.

b) The Tribunal has erred in fixing the income of the first respondent at Rs.3,000/- per month, without any basis.

c) The disability of the first respondent at 50% was also fixed by the Tribunal without any basis.

d) The Tribunal erred in fixing the income of the first respondent at Rs.3,000/- per month and on the basis of the permanent disability at 50%, the Tribunal adopted 11years multiplier and granted compensation of Rs.1,98,000/- to the first respondent towards loss of earnings.

e)The Tribunal also erred in granting a sum of Rs.15,000/- towards Pain and Sufferings, Rs.2,000/- towards extra nourishment, Rs.5,000/- towards loss of income, during the treatment and Rs.1,000/- towards transport expenses without any basis.

6. Per contra, the learned counsel for the first respondent submitted that the first respondent was earning daily wage of Rs.120/- as an agricultural labourer (coolie) and therefore, fixing the income of the first respondent at Rs.3,000/- per month by the Tribunal is a reasonable sum. Considering the injuries suffered by the first respondent, the Tribunal has rightly awarded the compensation which is commensurate to the actual loss suffered by him on account of the accident.

7. This Court after considering the materials available on record and after perusing the impugned award and after hearing the submissions of the respective counsels observes the following:

a) The claim of the first respondent that he was an agricultural labourer (coolie) earning daily wage of Rs.120/- has not been disproved by the Appellant by providing any contra evidence before the Tribunal. The Tribunal has assessed the monthly income of the first respondent at Rs.3,000/-, even though the first respondent in his claim had revealed that his daily wages was Rs.120/- and if the sum is calculated for a month, it will amount to Rs.3,600/- per month.

b) The accident is not disputed by the Appellant. They have disputed only the quantum of compensation granted to the first respondent under the heads pain and suffering, extra nourishment, loss of income during treatment and transport expenses. They have also disputed that the first respondent has not suffered 50% disability and therefore, 11years multiplier adopted by the Tribunal for awarding compensation to the first respondent is incorrect.

8. This Court has perused the findings of the Tribunal.

a) Under the impugned award, the Tribunal has framed two points for consideration which are as follows:

i) Whether the accident was due to rash and negligent act of the lorry TN28-B-3265?

ii) Whether the first respondent is entitled to compensation and if so, what is the quantum?

b) The Tribunal has given a clear finding that the accident was caused only due to the rash and negligent act of the lorry driver bearing registration No.TN28-B-3265 which is insured with the Appellant.

c) The Tribunal has also observed that no contra evidence has been let in on the side of the Appellant to disprove the statement of the first respondent which is disclosed in the First Information Report.

d) The Tribunal has also considered all the documents marked as exhibits namely Ex.A1 to Ex.A5 on the side of the first respondent and only thereafter, has passed the Award in favour of the first respondent.

e) The injury suffered by the first respondent is only a simple injury as seen from the observations of the Tribunal that a lacerated injury measuring 10x2x4 c.m. over the right palm exposing muscles and tendon and a lacerated injury at the back side of the right hand measuring 8x4x2 cm exposing muscle and bone.

f) As seen from the observations of the Tribunal, injury suffered by the first respondent is only a lacerated injury and therefore, the multiplier method ought not to have been applied

by the Tribunal.

9. This Court, considering all these factors in the following manner:

a) In the considered view of this Court, the percentage of disability suffered by the first respondent is 58% which is undisputed, the compensation should have been fixed only at percentage basis and not by applying multiplier formula. Therefore, for a 58% of disability at the rate of Rs.2,000/- per percentage of disability, works out to Rs.1,16,000/- which this Court is of the considered view that the said compensation is the reasonable one on account of disability suffered by the first respondent.

b) Insofar as the compensation awarded under the head pain and suffering, the Tribunal has awarded Rs.15,000/- only whereas this Court is of the considered view that considering the period of hospitalisation undergone by the first respondent, a sum of Rs.25,000/- would be a reasonable figure.

c) Insofar as the compensation for extra nourishment, the Tribunal has awarded a sum of Rs.2,000/- whereas this Court is of the considered view that a sum of Rs.15,000/- would adequately compensate the first respondent under this head.

d) Insofar as the loss of income due to the injuries suffered on account of accident, the Tribunal has awarded a sum of Rs.5,000/-. The case of the first respondent before the Tribunal is that due to the injuries suffered by him, she could not work for three months which has not been disproved by the Appellant by letting in any contra evidence. Considering the same, this Court is of the considered view that a sum of Rs.9,000/- should be awarded to the first respondent under the head loss of income.

e) Insofar as the transportation charges are concerned, the Tribunal has awarded only Rs.1,000/- whereas this Court is of the considered view that the sum of Rs.5,000/- ought to have been awarded to the first respondent under this head.

f) In respect of loss of amenities, the Tribunal has not awarded any amount towards loss of amenities which according to the considered view of this Court, is an incorrect finding. This Court is of the considered view that a sum of Rs.25,000/- should be awarded to the first respondent under the head loss of amenities.

g) The Tribunal has also not awarded any compensation to the first respondent towards attender benefits and therefore, this Court directs the Appellant to pay Rs.5,000/- to the first

respondent towards compensation for attender benefits.

10. From the foregoing observations recorded, this Court is of the considered view that the award passed by the Tribunal has to be modified in the following manner :

Heads	Amount Awarded by the Tribunal	Modified Amount
Disability	Rs.1,98,000	Rs.1,16,000/-
Pain and Sufferings	Rs.15,000/-	Rs.25,000/-
Extra Nourishment Charges	Rs.2,000/-	Rs.15,000/-
Loss of income during treatment	Rs.5,000/-	Rs.9,000/-
Transportation Charges	Rs.1,000/-	Rs.5,000/-
Loss of amenities	Nil	Rs.25,000/-
Attender Charges	Nil	Rs.5,000/-
Total	Rs.2,21,000/-	Rs.2,00,000/-

11. In the result, the appeal is partly allowed by modifying the award dated 23.06.2008 passed by the Motor Accident Claims Tribunal in MCOP. No. 1133 of 2005 in the above mentioned manner by reducing the compensation awarded to the first respondent to Rs.2,00,000/- instead of Rs.2,21,000/- together with interest at the rate of 7.5% per annum on Rs.2,00,000/-. The first respondent is permitted to withdraw the amount to the extent of the modified award lying to the credit of MCOP. No. by filing appropriate application. No costs. Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Fast Track Court-V,
Coimbatore, Tiruppur

copy to

The Section Officer,
V.R Section,
High Court, Madras

+1cc to Mr.R.Sivakumar, Advocate sr.56583

C.M.A.No.2992 of 2008

pvs(co)
nr 10/04/2019