

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.724 of 2010

and

M.P.No.1 of 2010

The Divisional Manager,
The Oriental Insurance Co. Ltd.,
S.V.Complex, No.179, Easwaran Koil Street,
Pondicherry. ...Appellant/ 2nd Respondent

Vs

1. Sivakumar
2.Kulasekaran ...Respondents/ petitioner / 1st Respondent

[The second respondent remained exparte
in the lower court and hence notice
dispensed with for him]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the Award passed by the
Motor Accidents Claims Tribunal, (II Additional District
Judge), Pondicherry in M.A.C.T.O.P.No.408 of 2003 dated
28.04.2006.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : No Appearance

JUDGMENT

The instant appeal has been filed by the Insurance
Company challenging the Award dated 28.04.2006 passed by the
Motor Accidents Claims Tribunal, (II Additional District
Judge), Pondicherry in M.A.C.T.O.P.No.408 of 2003.

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

(i) The first respondent sustained injuries as a result
of an accident caused by a bus bearing bearing Registration
No.TN-32-Y-6996 owned by the second respondent and insured
with the Appellant. The first respondent preferred a claim
before the Motor Accidents Claims Tribunal in
M.A.C.T.O.P.No.408 of 2003 seeking a compensation of
Rs.5,00,000/-. The Motor Accidents Claims Tribunal by its
Award dated 28.04.2006 passed in M.A.C.T.O.P.No.408 of 2003
directed the Appellant to pay the first respondent a sum of

Rs.2,17,900/- together with interest at 7.5% per annum from the date of claim till the date of the realisation.

3. Aggrieved by the Award dated 28.04.2006 passed in M.A.C.T.O.P.No.408 of 2003, the instant appeal has been filed by the Insurance Company.

4. Heard, Mr.M.Krishnamoorthy, learned Counsel for the Appellant. Despite service of notice on the respondents and their names have been printed in the cause list today, none appears on their side.

5. According to the learned Counsel for the Appellant, the instant appeal has been filed by the Insurance Company challenging their liability as well as the quantum of compensation awarded by the Tribunal under the impugned Award. According to the learned Counsel for the Appellant, the multiplier method ought not to have been applied by the Tribunal while assessing the compensation payable to the first respondent. According to him, the first respondent has sustained only 40% disability being a checker in a bus, the injury sustained by him has not caused any loss of earnings to him. Instead of granting compensation on a lumpsum basis, the Tribunal has erroneously awarded compensation towards disability applying the multiplier method. Having got down from a moving bus, the first respondent is not liable to be compensated by the Appellant on account of his own negligence.

6. This Court, after having considered the materials available on record and after having examined the impugned award and after hearing the submissions of the learned Counsel for the Appellant, observes the following:

(a) The nature of injuries sustained by the first respondent as a result of the accident is not disputed by the Appellant. The first respondent has produced the disability certificate which is marked as Ex. P.14 before the Tribunal. No contra evidence has been produced by the Appellant to disprove the percentage of disability suffered by the first respondent as a result of the accident.

(b) The Tribunal has given a clear finding that due to the injuries sustained by him as a result of the accident, the first respondent is unable to walk and he has lost some muscle in his left leg and he has also lost power in the left leg and he is also limping. There is tenderness over the fracture bone and he is unable to carry heavy weight and he cannot lift and walk for a long time and the movement of ankle and knee joints are restricted.

(c) The Appellant has also not cross-examined the Doctor, before the Tribunal. Based on these findings, the Tribunal has accepted the assessment of the Doctor regarding the disability suffered by the first respondent as a result of the accident.

(d) Being a checker in a bus, the first respondent needs to move from place to place and the injury sustained by him as a result of the accident would certainly have impaired his

mobility. Therefore, this Court is of the considered view that the Tribunal has rightly applied the multiplier method in assessing the compensation payable to the first respondent.

7. The Appellant has also not produced any contra evidence to establish that there was negligence on the part of the first respondent, while getting down from the bus, which resulted in the accident. Therefore, this Court cannot accept the contention of the learned Counsel for the Appellant that only due to the negligence of the first respondent, he had sustained injuries.

8. The first respondent has filed 15 documents before the Tribunal which are marked as Ex.P.1 to Ex.P.15 and no documents were filed on the side of the Appellant. The first respondent had also examined himself as well as the Doctor who is PW.2. The Appellant has not examined any witness on their side to disprove the claim of the first respondent. Admittedly the Appellant has also not cross-examined the Doctor - PW.2. Under such circumstances, the liability fixed on the appellant herein by the Tribunal cannot be said to be incorrect.

9. So far as the quantum of compensation awarded by the Tribunal, this Court is of the opinion that the Tribunal has awarded only a sum of Rs.2,17,900/-, which cannot be said to be on the higher side considering the nature of the disability suffered by the 1st respondent. Hence, the compensation amount is confirmed. The Award passed by the Tribunal is a considered and reasoned Award. No ground has been made out by the Appellant to challenge the impugned Award. There is no merit in the instant appeal.

10. Accordingly the Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

arb/bri

Sd/-

Assistant Registrar (CS v)

//True Copy//

Sub Assistant Registrar

To

1.The II Additional District Judge
Motor Accidents Claims Tribunal,
Pondicherry.

2.The Record Clerk,
Vernacular Section,
High Court, Madras.

+1cc to Mr.M.Krishnamoorthy , Advocate SR.No. 62750

C.M.A.No.724 of 2010

ASK(13/11/2018)