

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.354 of 2008

National Insurance Co. Ltd.,
Cuddalore N.T.

....Appellant/2nd Respondent

Vs

1. Sivan,

...1st Respondent/Petitioner

2. Mahendran

...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 25.4.2007 made in MACTOP.NO.769 of 2005 on the file of the Motor Accident Claims Tribunal, (Additional Subordinate Judge No.2), Cuddalore.

For Appellant : Mr. S.Vadivel

For Respondents : R1 - not ready in notice.
& R2 -No appearance

JUDGMENT

The instant appeal has been filed challenging the Award dated 25.04.2007 passed in MCOP.No.769 of 2005 by the Motor Accident Claims Tribunal, Additional Subordinate Judge II, Cuddalore.

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

(i) The 1st respondent sustained injuries, as a result of an accident caused by an Auto-Rickshaw bearing Registration No.TN-07-E-4620 owned by the 2nd respondent and insured with the appellant. The 1st respondent preferred a claim before the Motor Accident Claims Tribunal in MACTOP.No.769 of 2005 seeking a compensation of Rs.5 lakhs.

(ii) The Motor Accident Claims Tribunal, by its Award dated 25.4.2007 passed in MACTOP.No.769 of 2005 directed the appellant to pay the 1st respondent, a sum of Rs.3,62,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

(iii) Aggrieved by the Award dated 25.04.2007 passed in MACTOP.No.769 of 2005, the instant appeal has been filed by the Insurance Company.

3. Heard Mr.S.Vadivel, learned counsel for the appellant . Till date, notice has not been served on the respondent/claimant. The notice sent to the 2nd respondent has been duly served and his name has been printed in the cause list today.

4. Since the appeal relates to the year 2008 and this Court is going to confirm the award, there is no necessity to serve the notice on the 1st respondent.

5. According to the learned counsel for the appellant, the primary ground for challenge in the instant appeal is that the tribunal ought not to have applied the multiplier method considering the nature of injuries sustained by the 1st respondent/claimant and his avocation.

6. Learned counsel would further contend that the 1st respondent did not file the detailed medical records such as Discharge Summary issued by the Doctor before the tribunal to prove his injury. Further learned counsel for the appellant further contended that the driver of the Auto did not possess a valid driving licence. Therefore, according to the appellant, they are not liable to compensate the claim of the 1st respondent.

7. This Court, after having considering the materials available on record and after examining the impugned Award and after hearing the submissions of the learned counsel for the appellant observes the following;

a) The 1st respondent sustained two fractures namely fracture on Meta Corpal Bone in 5th finger and fracture of Fibula bone in the right leg and also sustained multiple injuries all over the body.

b) PW2, the Doctor has also assessed the disability of the 1st respondent at 50%. No contra evidence has been produced by the appellant to disprove the disability suffered by the 1st respondent as a result of the accident.

c) At the time of the accident, the 1st respondent was 23 years old and was running a hotel business. No contra evidence has been produced by the appellant before the Tribunal to disprove the age and the nature of avocation of the 1st respondent.

d) Even though the 1st respondent has claimed in his claim petition that he was earning a monthly income of Rs.8000/-, the tribunal has assessed the monthly income of the 1st respondent only at Rs.3,500/-.

e) The 1st respondent has filed four documents in support of his claim namely Exs.P.5, P.6, P.9 and P.10 which includes wound certificate, medical certificate, treatment records, disability certificate and X-Ray. The tribunal, after having considered all those documents and after having applied the multiplier method has passed the impugned award in favour of the 1st respondent. Therefore, this Court is of the view that the award passed by the tribunal is a considered and well reasoned Award.

8. In the light of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected M.P.No.1 or 2008 is closed.

9. The impugned Award is a common Award pertaining to other claimants as well. This Court, by its order dated 7.8.2017 in CMA.2590 of 2017 has dismissed another appeal filed by the same Insurance company challenging the award passed in favour of another claimant injured in the same accident.

10. It is submitted by the learned counsel for the appellant that the entire award has already been deposited to the credit of MCOP. The 1st respondent is permitted to withdraw the same on filing an appropriate application before the Tribunal.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msr

The Additional Subordinate Judge No.II,
(Motor Accidents Claims Tribunal),
Cuddalore.

+1cc to M/S.S.Vadivel, Advocate Sr.62450

CMA.No.354 of 2008

sj[co]
srg 9/10/2018