

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

CIVIL MISCELLANEOUS APPEAL NO.1469 OF 2006

The Divisional Manager
The United India Insurance Co. Ltd.
Nehru Street,
Pondicherry.

... Appellant/2nd Respondent

Vs

1. Prabu
2. S.Haleel Rahaman

.. Respondents/Respondents

Prayer:

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 29.04.2005 passed in M.A.C.T.O.P.No.362 of 2003 on the file of the Motor Vehicle Accident Claims Tribunal, II Additional District Judge, Pondicherry.

For Appellant : Mr.S.Ramalingam

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award and decree, dated 29.04.2005 passed in M.A.C.T.O.P.No.362 of 2003 on the file of the Motor Vehicle Accident Claims Tribunal and II Additional District Judge, Pondicherry.

2.It is the case of the first respondent/claimant that on 13.01.2003 at about 23.15 hours, when the first respondent herein was riding his bicycle on the Mailam Road, Sedarapet, Pondicherry, the lorry bearing Reg.No.TN-28-A-0739, belonging to the second respondent and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and hit the first respondent herein. Due to the impact, the first respondent sustained grievous injuries. He filed a claim petition before the Tribunal, claiming a sum of Rs.3,95,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,51,720/- with interest at the rate of 9%

per annum from the date of petition, rendering a finding that the accident had occurred only due to the rash and negligent driving of the driver of the lorry.

3.Challenging the same, the appellant Insurance Company has come up with the present appeal.

4.The learned counsel for the appellant has submitted that the first respondent herein is no more and he is unable to take steps due to non-availability of details in this regard. He submitted that the compensation awarded by the Tribunal is excessive. However, he has not disputed the finding of the Tribunal in respect of negligence.

5.Though this appeal was admitted way back in the year 2006, the appellant has not taken proper steps to bring the legal heirs of the deceased first respondent, even at this length of time. However, due to efflux of time, this Court is inclined to decide this appeal on merits.

6.Heard the learned counsel for the appellant and perused the materials and evidence available on record, carefully and meticulously.

7.Since the learned counsel for the appellant has not disputed the manner in which the accident took place, the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, need not be interfered with by this Court.

8.As far as the quantum of compensation is concerned, the Tribunal has taken note of the following injuries sustained by the claimant by way of evidence given by P.W.2-Doctor:

1. Inability to move right lower leg
2. Tenderness of right great toe
3. Interphalangeal joints of right great toe frozen
4. Arch of right foot reduced
5. Scar over the right great toe tender
6. Traumatic arthritis of right ankle
7. Wasting of muscle of right lower leg
8. Cannot carry heavy weight
9. Loss of power of muscles of right lower leg
10. Loss of terminal phalanx of right great toe.

9.Though the claimant sustained the above 10 injuries and the Doctor has assessed the disability at 31%, the Tribunal has reduced the percentage of disability to 20%, which in the considered opinion of this Court, cannot be said to be on the higher side. The Tribunal has determined the monthly income of

the claimant at Rs.3,300/- relying upon Ex.P10-Salary Certificate, arrived at the annual income at Rs.39,600/-, adopted the multiplier of 16 and has arrived at the loss of income for 20% disability at Rs.1,26,720/-. The Tribunal has also awarded a sum of Rs.10,000/- towards extra nourishment, Rs.5,000/- towards pain and suffering and Rs.10,000/- towards mental agony. The Tribunal has relied upon the exhibits, evidence of witnesses, medical bills, treatment records, percentage of disability assessed by the Doctor and all other aspects in a proper perspective and has awarded the above amounts under various heads to the claimant. Further, this Court is of the considered view that the amounts awarded towards these heads are reasonable and justifiable and hence, the same are confirmed.

10. In the result, affirming the award passed by the Claims Tribunal, the Civil Miscellaneous Appeal filed by the Insurance Company stands dismissed. No costs. The appellant/Insurance Company is directed to deposit the compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. Since it is stated by the learned counsel for the appellant that the first respondent/claimant is no more, on such deposit being made by the appellant Insurance Company, the legal heirs of the deceased shall file appropriate applications before the Tribunal for withdrawal of the deposited amount.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srk/mp

To

1. Motor Vehicle Accident Claims Tribunal,
II Additional District Judge, Pondicherry.
2. The Section Officer
V.R.Section, Madras High Court, Chennai 104.

+2cc to Mr.T.Dhanya Kumar, Advocate, S.R.No.63246 & 63514

C.M.A.No.1469 of 2006

VGII(CO)
CS/11/12/2020