

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.07.2019
CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1802 of 2007 and
M.P.No.1 of 2007

The New India Assurance Co.Ltd.,
45, Moore Street,
Chennai - 600 001. Appellant/Respondent 2

Vs.

1.Elangovan
2.Shailaja ...Respondent I/Petitioner I
(R2 was set exparte before the Court below)
.... Respondent II/Petitioner I

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 15.06.2005 made in MCOP No.344 of 2003 on the file of the Motor Accident Claims Tribunal, Subordinate Judge) Ponneri.

For Appellant : Mr.K.Padmanabhan

J U D G M E N T

This appeal is preferred by the Insurance Company against the award of a sum of Rs.82,500/- towards compensation to the first respondent for the injuries suffered by him in a motor vehicle accident.

2. The case in brief, is as follows:-

On the fateful day, i.e., on 27.05.2003 at about 10.15 p.m., when the first respondent/claimant was riding the motorcycle bearing Registration No.TN-20-V-7725 towards GNT Kavangarai, the lorry bearing registration No.AP-24-U-7733 belonging to the second respondent and insured with the appellant Insurance Company, came in a rash and negligent manner and hit the first respondent/claimant on the back side. Due to the same, the first respondent sustained grievous injuries, for which, he filed a claim petition seeking compensation of Rs.3,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.82,500/- interest at the rate of 9% per annum from the date of petition.

3.Challenging the quantum of compensation awarded by the Tribunal as excessive, the appellant Insurance Company has preferred this appeal.

4. The learned counsel for the appellant/Insurance Company has disputed only quantum of compensation awarded by the Tribunal. According to him, the amount of Rs.58,500/- awarded under the head "loss of income" by the Tribunal is exorbitant and excessive, in the facts and circumstances of the case and hence, the same has to be reduced.

5.Though this appeal was admitted way back in the year 2007, the Appellant/Insurance Company has not taken steps to serve papers on the respondents, even at this length of time. However, considering the paucity of time, this Court is inclined to dispose of this appeal, on merits.

6.Heard the learned counsel for the appellant/Insurance Company and perused the materials 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, does not require any interference.

8.As regards the quantum of compensation awarded by the Tribunal, PW.1/first respondent/claimant deposed in his evidence that due to the accident, he sustained multiple injuries with rib fracture; he took treatment as in-patient in the Apollo Hospital, Chennai for a period of two weeks. PW.2 /Doctor deposed before the Tribunal that the first respondent sustained fractures and due to the injuries and fractures, he finds it difficult to do hard work and lift heavy objects. The doctor issued Ex.P8 disability certificate, as per which, the first respondent/claimant sustained 45% disability. But the Tribunal reduced the same to 25% on the ground that the percentage of disability fixed by the Doctor is excessive. With regard to the income of the claimant, since there is no documentary evidence to prove that the claimant was earning a sum of Rs.10,000/- as Building Contractor, the Tribunal has fixed the monthly income of the injured as Rs.1,500/-, adopted 13 multiplier and arrived at the sum of Rs.58,500/- towards 25% disability. The Tribunal has correctly fixed the monthly income, adopted the correct multiplier and awarded Rs.58,500/- towards loss of income for 25% disability. The Tribunal has also awarded Rs.10,000/- towards pain and suffering, Rs.10,000/- towards extra nourishment, Rs.3,000/- towards Transportation and Rs.1,000/- towards damages to clothes, which this Court is not inclined to

interfere, as the same are fair and reasonable.

9. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The connected miscellaneous petition is closed.

10. The Appellant / Insurance Company is directed to deposit the entire 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. On such deposit being made, the first respondent / claimant is permitted to withdraw the same on making proper application before the Tribunal.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal, Sub judge
Ponneri.

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

+1 cc to M/s.K.Padmanabhan Advocate sr60132

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