

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2647 of 2007

&

M.P.No.1 of 2007

The New India Assurance Co., Ltd.,  
No.1, Bharathi Road,  
Arcot Woodlands Building,  
Cuddalore.

... Appellant/2nd Respondent

Vs.

1. A.Anburajan ...Petitioner/1st Respondent

2. R.Senthil Kumar

(Second respondent was set exparte  
before the Tribunal)

...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.02.2007 made in M.A.C.T.O.P.No.279 of 2005 on the file of the Motor Accidents Claims Tribunal, Principal Sub-Judge, Cuddalore.

For Appellant : Mr.V.Soundarrajan  
For Respondents : No Appearance

J U D G M E N T

The appeal is preferred by the appellant Insurance Company against the Judgment and Decree dated 10.02.2007 made in M.A.C.T.O.P.No.279 of 2005 on the file of the Motor Accidents Claims Tribunal, Principal Sub-Judge, Cuddalore (for brevity, "the Tribunal").

2. The case in brief, is as follows:

On the fateful day, ie. on 14.12.2001, at about 9.30a.m, the first respondent/claimant was riding his bi-cycle from West to East direction on the left side of Melpattampakkam main road,

the motorcycle bearing Registration No.PY-01-P-0084 belonging to the second respondent and insured with the appellant insurance company, came in a rash and negligent manner and hit the bicycle from behind. As the result of the same, the first respondent/claimant sustained multiple injuries all over the body. He filed a claim petition claiming a compensation of Rs.5,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,51,800/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant/Insurance Company has disputed only the quantum of compensation awarded by the Tribunal. He submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.Heard the learned Counsel for the appellant and perused the materials available on record carefully and meticulously.

5.Despite the service of notice and the names of the respondents having been printed in the cause list, there is no representation on their behalf. However, considering the passage of time, this Court is inclined to proceed with this appeal, on merits.

6.Since the appellant/Insurance Company 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 act on the part of the rider of the motorcycle, need not be interfered with by this Court.

7.As regards the quantum of compensation, the claimant himself examined as P.W.1, who deposed before the Tribunal that at the time of the accident, he was 36 years old and was earning Rs.7,500/- per month as Supervisor in M/s.EID Parry India Ltd and he suffered several injuries all over his body. The evidence of P.W.1 was supported by P.W.2-Dr.Venugopal/Orthopaedic Surgeon, who stated in his evidence that the first respondent/claimant suffered fracture of middle one third of ulna and radius on the right forearm; due to which, the movement of forearm was restricted and he finds it difficult to use his hands as before and lift heavy objects and thus, suffered 40% permanent disability. Ex.A5 is the disability certificate issued by him. Ex.A6-X ray report was also proved the injuries sustained by the respondent/claimant. Taking note of all these factual scenario, the Tribunal has rightly fixed the monthly income of the injured at Rs.3,000/-; arrived at the annual income at Rs.36,000/-; adopted the multiplier of 17 based on the

age of the deceased at 35 years as per Ex.A3-discharge summary; and quantified the compensation under the head "loss of income due to disability" at Rs.2,44,800/- (36,000/- x 17 x 40%), besides awarding Rs.7,000/- towards pain and suffering, which this Court is not inclined to interfere, as the same is just and reasonable, considering the nature of the injuries sustained by the first respondent/claimant and having regard to the facts and circumstances of the case.

8.In the result, this Civil Miscellaneous Appeal is dismissed, confirming the award passed by the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed. The appellant/Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit, the Tribunal shall transfer the amount lying in the deposit to the savings bank account of the first respondent/claimant through RTGS within a period of one week thereafter.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,  
Principal Sub-Judge, Cuddalore.

2.The Section Officer, VR Section,  
High Court, Madras.

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