

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A. NO.2904 OF 2006

&

M.P.NO.1 OF 2006

The Branch Manager,
National Insurance Co. Ltd.,
Branch Office,
No.58, Rajaji Veethi,
Kangeyam 633 701

... Appellant/2nd Respondent

versus

1. Dr.Ezhilarasi
2. P.Sathishkumar

... Respondents/Petitioner &
1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.04.2006 made in M.A.C.T.O.P.No.748/2004 on the file of the Motor Accident Claims Tribunal Cum Additional District Court, Dharmapuri.

For Appellant : Mr.S.Vadivel

For Respondents: Mr.M.Selvam for R1.
No appearance for R2.

JUDGMENT

This Appeal is preferred by the Insurance Company/Insurer as against the award passed by the Claims Tribunal in M.C.O.P.No.748 of 2004.

2. The case of the claimant is that on 25.10.2004 when the claimant was traveling in a Maruti car bearing Registration No.TN29E0900, it was hit by an Ambassador car bearing Registration No.TN28C556, due to rash and negligence driving of the driver of the Ambassador car. Hence, the claimant has preferred a claim petition before the Tribunal.

3. The Tribunal, based on the evidence and documents on record, has awarded a sum of Rs.5,55,418/- payable by the Insurance Company, which was ordered to be recovered from the insurer/owner of the vehicle. As against the award passed by the Tribunal, this Appeal is preferred by the Insurance Company.

4. Heard both sides.

5. Learned counsel for the appellant/Insurance Company would submit that the Tribunal has erred in taking into consideration the fact that the accident was a head on collision; that the Tribunal ought not to have fixed the negligence solely on the driver of the car, simply because the FIR was registered against the driver of the car; that in any event, the award passed by the Tribunal is on the higher side which needs significant reduction.

6. Per contra, the learned counsel for the respondents/claimants has submitted that the Tribunal has analysed each and every aspect into consideration and has awarded the compensation, which is nothing but just and hence, interference is uncalled for; the Tribunal has analyzed the evidence of Doctors in a proper perspective and has rendered findings based on documents adduced by both sides.

7. An analysis of the award passed by the Tribunal would go to show that the first respondent/claimant herself is a Doctor, who sustained injuries due to the accident. The factum of the accident is not under dispute. P.W.3, Dr.Ezhilarasi, who examined the claimant, has spoken about the injuries sustained by the claimant. One Dr.Nataraj has been examined before the Tribunal, who has given Ex.P.16-wound certificate to the effect that the claimant had sustained fractures and grievous injuries all over the body. Exs.P.18, Ex.P.19, Ex.P.24 and Ex.P.25 wound certificates have been filed before the Tribunal. P.W.6 Dr.Elangovan has assessed the disability of the claimant and has given a certificate to the effect that the claimant has suffered 20% disability. Based on these documents, the Tribunal has awarded a sum of Rs.5,55,418/- under the following break up details:

i. Loss of income	= Rs.3,60,000/-
ii. Expenses relating to treatment	= Rs. 25,418/-
iii. Loss of Earnings	= Rs. 20,000/-
iv. Non-pecuniary damages (General Damages)	= Rs. 50,000/-
v. Loss of Amenities	= Rs.1,00,000/-
Total amount awarded by the Tribunal	= Rs.5,55,418/-

8. From the narration of facts, it is clear that the Tribunal has awarded a sum of Rs.1,00,000/- as well as Rs.50,000/- towards Loss of Amenities and Pain and Sufferings. Though it is borne out from records that the claimant has sustained fractures as well as grievous injuries, awarding sums of Rs.1,00,000/- towards Pain and Sufferings and Rs.50,000/- Loss of Amenities is nothing but duplication. Hence, the amount of Rs.1,00,000/- awarded towards pain and suffering is reduced to Rs.50,000/-.

9. The other heads under which the Tribunal has passed the award are preferably matches with the II Schedule of the Motor Vehicles Act and conventional methodologies adopted by the Tribunal time and again and settled principles of law laid down by this Court as well as by the Apex Court. Hence this Court is of the opinion that reducing Rs.50,000/- from the total compensation amount payable, as stated supra, would meet the ends of justice.

10. In the result, this Civil Miscellaneous Appeal filed by the Insurance Company/Insurer is partly allowed, by reducing the total amount of compensation from Rs.5,55,418/- to Rs.5,05,418/-, which is payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. It is made clear that the pay and recovery ordered by the Tribunal is sustained, as such, since there is no contention raised by the learned counsel on either side on that aspect.

11. The appellant/Insurance Company shall 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 Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant/injured/first respondent herein, forthwith, through RTGS. Consequently, the connected MP is closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal Cum
Additional District Court, Dharmapuri.

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

+1cc to Mr.S.Vadivel, Advocate, S.R.No.70304

C.M.A. No.2904 of 2006
and M.P.No.1 of 2006

PA (CO)
CS/31/07/2020



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