

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2869 of 2007 and
M.P.No.1 of 2008 and
C.M.P.No.2 of 2007 and
M.P.No.1 of 2009

United India Insurance Co. Ltd.,
Villupuram. Appellant/2nd Respondent

..Vs..

1.Dharmalingam1st Respondent/Claimant

2.Adapala Vengata Narasima2nd Respondent/1st Respondent
(set exparte before the Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 30.12.2005 in M.C.O.P.No.155 of 2002 passed by the Principal Sub-Judge, on the file of Motor Accident Claims Tribunal, Villupuram.

For Appellant : Mr.M.J.Vijayaraghavan

For Respondents: No Appearance for R1
R2 - exparte

JUDGMENT

The appellant is the United India Insurance Company Limited, Villupuram. They are the second respondent in M.C.O.P.No.155 of 2002 on the file of the Principal Subordinate Judge, Motor Accidents Claims Tribunal, Villupuram.

2.The first respondent/claimant filed a claim petition under Section 166 (1) of the Motor Vehicles Act, 1988 in M.C.O.P.No.155 of 2002 on the file of the Principal Subordinate Judge, Motor Accidents Claims Tribunal, Villupuram seeking compensation of Rs.5,00,000/- for the injuries sustained by him

in a road accident that took place on 17.07.2001, at about 07.30 hours, when he was riding his bicycle on Kannalam - Valathi road, Chennai.

3. According to the first respondent/claimant, a speeding Ambassador car bearing Registration No. TAS 5758 belonging to the second respondent hit him, as a result of which, he sustained grievous injuries all over his body. His further contention is that the rash and negligent driving of the driver of the second respondent was the cause of the accident and that since the said vehicle was insured with the present appellant, both of them are jointly and severally liable to pay compensation to him.

4. The owner of the Ambassador car bearing Registration No. TAS 5758 did not appear before the tribunal and therefore, he was set ex-parte. The present appellant contested the claim petition. After analysing the evidence on record, the tribunal, awarded compensation of Rs.3,34,000/- together with interest at the rate of 7.5% per annum to the first respondent/claimant. Aggrieved over the orders passed by the tribunal, the United India Insurance Company, Villupuram has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr. M. J. Vijayaraghavan, learned counsel appearing for the appellant contended that the FIR was filed after a lapse of one month and there is also discrepancy in describing the vehicle involved in the accident. He drew the attention of this Court to the discharge summary (Ex.A5) and a copy of the Accident Register (Ex.A4) and contended that in the discharge summary, while, it is indicated as "car versus pedestrian", in the copy of the Accident Register it is stated as "Tata sumo car". It is also his contention that in the claim petition, the first respondent/claimant has indicated the offending vehicle as Ambassador car bearing Registration No. TAS 5758. He would therefore contend that the tribunal was wrong in fixing the negligence on the part of the driver of the second respondent.

6. No appearance for the first respondent.

7. A perusal of the records shows that the FIR is registered against the driver of the Ambassador car bearing Registration No. TAS 5758 and in the accident register (Ex.A4), the name of the offending vehicle is indicated as "Tata sumo car". Merely because, the person who has filled up the accident register has indicated the name of the offending vehicle as "Tata sumo car", the entire case of the first respondent/ claimant cannot be thrown out, especially, when the Sub-Inspector of Police, Valathi Police Station, Villupuram has registered FIR against the driver of the Ambassador car bearing Registration No. TAS 5758.

8.It is also pertinent to point out that the owner of the Ambassador car namely the second respondent did not contest the claim petition and infact he remained absent before the tribunal and was set ex-parte.

9.As far as the quantum of compensation is concerned, the tribunal has fixed the monthly income of the first respondent/claimant as Rs.3,000/- based on the Salary Certificate (Ex.A8) issued by one Mr.K.Ramasamy, Inspector, Peerless Enquiry Centre. The person who has issued the Salary Certificate (Ex.A8) has not been examined as witness before the tribunal to prove the contentions of the above Certificate. In the absence of sufficient proof, the income of the first respondent/claimant is fixed as Rs.2,000/- per month.

10.The learned counsel appearing for the appellant also contended that Dr.Ravindar (P.W.2) without following any guidelines has assessed the partial permanent disability as 50% and the tribunal has wrongly adopted multiplier method, especially, when, there is no functional disability. In the decision in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 it has been held thus:-

"8.Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high

a compensation. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of the court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010(8) SCALE 567).

9. The Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is a permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has

affected or will affect his earning capacity.”

11. In the instant case, since the first respondent/claimant has sustained only a fracture of his right ankle and right hip, the tribunal was wrong in adopting multiplier method, especially, when there is no documentary evidence to show the actual profession of the claimant. Therefore, only a sum of Rs.50,000/- can be awarded towards partial permanent disability (i.e., awarding Rs.1000/- per percentage) since the accident took place in the year 2001.

12. Apart from that, the first respondent/claimant is entitled to a sum of Rs.10,000/-, Rs.5,000/-, Rs.2,000/- and Rs.500/- towards pain and sufferings, extra nourishment, transportation charges and damage to clothes respectively. He is also entitled to a sum of Rs.10,000/- towards loss of amenities. Since the first respondent/claimant sustained fracture on his right ankle and right hip, he would not have been in a position to attend to his regular work at least for six months. Therefore, a sum of Rs.12,000/- (Rs.2,000 x 6) is awarded towards loss of income.

13. The award passed by this Court under various heads is extracted hereunder:-

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.50,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Transportation	Rs.2,000/-
4.	Extra nourishment	Rs.5,000/-
5.	Damage to clothes	Rs.500/-
6.	Loss of amenities	Rs.10,000/-
7.	Loss of income	Rs.12,000/-
Total		Rs.89,500/-

Thus the compensation awarded by the tribunal is reduced to Rs.89,500/-.

14. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(ii) Thus the compensation awarded by the tribunal is reduced from Rs.3,34,000/- to Rs.89,500/- which will carry interest at the rate of 7.5% per annum from the date of claim

petition till the date of deposit.

(iii) It is represented that the entire compensation awarded by the tribunal was already deposited by the appellant Insurance Company. The Insurance Company is at liberty to withdraw the award amount paid in excess of the award passed by this court.

(iv) The appellant/claimant is at liberty to withdraw the entire compensation awarded by this court after following due procedure of law.

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Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Villupuram.

+1cc to Mr.M.J.Vijayaraaghavan, Advocate, SR.No.1734/19

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

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