

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3177 of 2008 and
M.P.No.1 of 2008

The Oriental Insurance Co Ltd
Shoba D.M.S.Complex
Railway Station Road
Palakkad
Keral

..Appellant / 2nd Respondent
Vs

1. M.Subramaniam ..1st Respondent/Petitioner

2. S.Subramaniam ..2nd Respondent/2nd Respondent

Prayer: Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.01.2007 made in MCOP No.374 of 2003 on the file of the Motor Accidents Claims Tribunal/Additional District Court cum Fast Track Court No.V, Coimbatore at Tiruppur.

For Appellant : Mr.M.Rajasekhar
For 1st Respondent : Mr.S.S.Swaminathan

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company /appellant herein as against the award passed in MCOP 374 of 2003.

2. The claimant/1st respondent herein before the Tribunal states that on 09.11.2002 at about 16.30 hours, when he was riding his Moped bearing Reg.No.TN 39 C 4123, he was hit by a Van bearing Reg.No.TN 39 Q 7697. Due to the said impact, he sustained fractures on his left hand knee, right hip, right forehead. Stating that the accident had happened due to the rash and negligent driving of the driver of the Van, the claimant /1st respondent herein had filed a claim petition before the Tribunal. The Tribunal based on the evidence and documents on record, passed an award for a sum of Rs.4,33,000/- as total compensation, payable by the 2nd respondent /appellant herein.

3. Aggrieved over which, the Insurance Company/appellant herein has preferred this Appeal.

4.Heard the learned counsel for both sides.

5. The learned counsel for the appellant contended that the Tribunal has erred in fixing the negligence on the part of the 2nd respondent. No documents were produced by the claimant to prove that he was admitted and taken treatment in the Government Hospital at Tiruppur; the Tribunal ought not to have applied the multiplier theory in the case of injured, which does not resulted in amputation; In any event, the amount of Rs.3,12,000/- awarded towards loss of income is highly excessive.

6. Per contra, the learned counsel for the 1st respondent herein submitted that the award passed by the Tribunal was based on the materials and evidence adduced by the claimant and in fact the appellant herein had not examined any witness or marked any documents before the Tribunal and thus the award of the Tribunal has to be confirmed as such. He further submitted that the Tribunal has taken into consideration the evidence of the doctor and documents produced by the claimant for arriving at the compensation, which does not require any interference by this Court.

7. As far as the negligence aspect is concerned, the Tribunal has taken into account the evidence of PW 1, Ex.P.1 First Information Report and the Judgment of the Criminal Court, wherein, the driver of the van has accepted the guilt and paid the fine amount. The Tribunal has also taken note of the fact there was no document adduced on the side of the 2nd respondent /appellant herein to prove that the accident had not happened due to the negligent driving of the driver of the Van. On such score, the Tribunal has accepted the documents of the claimant and fastened the liability on the driver of the Van and there is no merit to interfere with the findings of the Tribunal on negligence aspect.

8. As far as the quantum of compensation arrived at by the Tribunal is concerned, it has assessed the quantum on the following parameteres. The claimant was working as Patent master in a Private Company by name M/s.Yes Knits and earning a monthly salary of Rs.5,400/- per month. Though he produced Ex.P.5 and Ex.P.9 Salary Certificate and Salary Vouchers, he could not establish that he was earning Rs.5,400/- as monthly salary. But the Tribunal has taken the monthly salary of the claimant at Rs.5,000/- per month. This Court is of the opinion that the Tribunal erred in arriving at the monthly income at Rs.5,000/- in the place of Rs.5,400/-. It is not in dispute that the accident had happened in the year 2002 and the award was passed during 2007. A Patent Master in a Private Limited Company, at that point of time cannot be earning Rs.5,000/- too and it can be taken only as Rs.4,500/-. However, the multiplier adopted by the Tribunal for the age group of 46, at 13 perfectly matches as per II Schedule of the Motor Vehicles Act. In such view of the matter, the loss of income would be $\text{Rs.4,500} \times 12 \times 13 \times 40/100 = \text{Rs.2,80,800/-}$, in the place of Rs.3,12,000/-. The other itemization that the Tribunal has

quantified the compensation is, Rs.88,000/- towards medical expenses, Rs.3,000/- towards Transport expenses, Rs.5000/- towards extra nourishment, Rs.4,500/- towards loss of earnings during treatment period, Rs.15,000/- towards pain and sufferings, Rs.5,000/- towards loss of amenities. For these itemization, the Tribunal has taken shelter from Ex.P.2 Wound Certificate, Ex.P.3, Discharge Summary and Ex.P.6.Disability Certificate. This Court is of the view that the itemization done by the Tribunal is as per the settled principles of law of this Court as well as Supreme Court. In such view of the matter, the findings on negligence is affirmed and the findings on quantum is set aside. The restructured break up details of the compensation awarded are as follows:-

S.No	Head	Compensation (in.Rs.)	
		Awarded by the Tribunal	Reduced by this Court
1.	Loss of income	3,12,000.00	2,80,800.00
2.	Medical expenses	88,000.00	88,000.00
3.	Transport Expenses	3,000.00	3,000.00
4.	Extra nourishment	5,000.00	5,000.00
5.	Pain and sufferings	15,000.00	15,000.00
6.	Loss of amenities	5,000.00	5,000.00
7.	Loss of earning during treatment period	5,000.00	4,500.00
Total		4,33,000.00	4,01,300.00

9. In the result, this Civil Miscellaneous Appeal is partly allowed by reducing the quantum of compensation from Rs.4,33,000/- to Rs.4,01,300/- which is payable with interest at the rate of 7.5% by the Insurance Company / appellant herein. No costs. Consequently, connection Miscellaneous Petition is closed. The appellant / Insurance Company shall deposit the said compensation amount, along with interest and costs, 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 amount to the Savings Bank Account of the claimant/1st respondent herein, through RTGS, within one week thereafter.

Sd/-
Assistant Registrar(CS)

//True Copy//

To

1. The Motor Accident Claims Tribunal/
Additional District Court cum Fast
Track Court No.V, Coimbatore at Tiruppur

Copy to:

The Section Officer
V.R.Section
Madras High Court
Chennai 104

+1 cc to Mr.M.Rajasekar, Advocate, sr.64731

+1 cc to Mr.S.S.Swaminathan, Advocate, sr.63736.

Rk (co)
krd 24/6

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