

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.08.2019
CORAM:
THE HON'BLE Mr. JUSTICE R.MAHADEVAN
Civil Miscellaneous Appeal No.3930 of 2008 and
M.P.No.1 of 2008

The Branch Manager
United India Insurance Co.Ltd
Gobichettipalayam

Appellant / 2nd Respondent

Vs

1. Pachaiappan

2. Ulaganathan

3. T.Senthilprabhu

Respondents /Petitioner /
Respondents 1 & 2

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 22.11.2005 made in M.C.O.P.No.78 of 2004 on the file of the Motor Accident Claims Tribunal, I Additional Subordinate Court, Gobichettipalayam.

For Appellant : Ms. I.Malar
For Respondents : R1 - died
R2 & R3 - Exparte

J U D G M E N T

Challenging the quantum of compensation awarded by the Claims Tribunal, the appellant insurance company has preferred this appeal.

2. In an accident that took place on 15.06.2003 at about 11.00am, the first respondent/claimant sustained grievous injuries, while going in his bicycle on Kolappalur-Nambiyur Main Road, due to rash and negligent riding of the rider of the motorcycle belonging to the second respondent and insured with the appellant insurance company. He filed a claim petition, claiming a compensation of Rs.5,00,000/-. The Tribunal, on consideration of the materials and evidence available on record, has awarded a total compensation of Rs.2,53,350/- with interest at 7.5%pa from the date petition. Aggrieved over the same, the present appeal came to be filed.

3. The learned counsel for the appellant has disputed only the quantum of compensation awarded by the Tribunal. According to her, the same is excessive, exorbitant and disproportionate to the injuries sustained by the first respondent/claimant and hence, the same has to be reduced substantially.

4. Heard the learned counsel for the appellant and perused the materials available on record.

5. Though this appeal was admitted way back in the year 2008, the appellant has not taken proper steps to implead the legal heirs of the deceased first respondent. However, taking note of the fact that the appeal is pending from the year 2008, this Court is inclined to dispose of the same on merits.

6. There is no dispute with regard to the finding of the Tribunal that the accident had occurred due to the rash and negligent act on the part of the rider of the motorcycle and hence, the same is confirmed as such. Consequently, the liability fastened on the appellant insurance company to pay compensation to the first respondent/claimant is also confirmed.

7. As far as the quantum of compensation, though the claimant has stated in his claim petition that he was earning around Rs.1,00,000/- yearly by doing agricultural activities, in the absence of any oral or documentary proof, the Tribunal has taken the monthly income of the claimant at Rs.4,000/-. Further, the Tribunal has taken the permanent disability sustained by the claimant at 40%, taking shelter from the evidence of PW.2 Thambiraj/doctor, who has issued Ex.P11 Disability Certificate to the claimant. The Tribunal has adopted the multiplier of 11, taking the age of the claimant as 55 years, on the basis of Ex.P5 wound certificate. Accordingly, the Tribunal has quantified the compensation under the head "loss of income due to disability" at Rs.2,11,200/- ($\text{Rs.4,000} \times 40\% = \text{Rs.1,600/-} \times 12 \times 11 = \text{Rs.2,11,200/-}$), which, in the opinion of this Court, is based on the materials and evidence and the settled principles of law and hence, the same is hereby confirmed.

8. That apart, the Tribunal has taken note of Ex.P7 -medical report relating to future treatment and awarded only Rs.15,000/- towards future medical expenses as against the claim of Rs.25,000/-, which appears to be fair and reasonable and hence, the same is hereby confirmed.

9. Similarly, the award of the Tribunal towards "medical expenses", "pain and suffering" and "extra nourishment"

at Rs.7,150/-, Rs.15,000/- and Rs.5,000/- respectively, in the considered view of this Court, is just and reasonable and hence, the same need not be interfered.

10. Thus, affirming the award of the Claims Tribunal, this appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. 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 legal heirs of the claimant through RTGS, on making proper application.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

vrn/rk
To

1. The Motor Accident Claims Tribunal
I Additional Subordinate Court
Gobichettipalayam
2. The Section Officer
V.R.Section
Madras High Court
Chennai 104

+1 cc to M/s.I.Malar Advocate sr67511

C.M.A.No.3930 of 2008 and
M.P.No.1 of 2008

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