

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1754 of 2009 and
M.P.No.1 of 2009

The Divisional Manager
United India Insurance Co.Ltd.,
No.3-A, Nethaji Road,
Cuddalore.

.... Appellant/2nd Respondent

Vs.

1.Dhanasekaran

..1st Respondent/Petitioner

2.Rani

(R-2 set exparte in the lower Court)

....2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30.09.2008 made in MCOP No.876 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Cuddalore.

For Appellant : Ms.N.Mala

For R-2 : Exparte

J U D G M E N T

This appeal is preferred by the Insurance Company as against the award of a sum of Rs.2,78,248/- towards compensation awarded to the first respondent for the injuries suffered by him in a motor vehicle accident.

2. The case in brief, is as follows:-

On the fateful day, i.e., on 06.01.2006 at about 6.30 a.m., when the first respondent/claimant was riding TVS 50 moped bearing Registration No.TN-31-B-9610 on the Panruti to Vadalur Main Road, the lorry bearing Registration No.TN-31-E-6633, belonging to the second respondent and insured with the appellant Insurance Company, came in a rash and negligent manner, without making horn, and dashed against the first respondent/claimant. Due to the same, the first respondent sustained grievous injuries, for which, he filed a claim petition seeking compensation of Rs.10,00,000/-. On

consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.2,78,248/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the quantum of compensation awarded by the Tribunal as excessive, the appellant Insurance Company has preferred this appeal.

4.The learned counsel for the Appellant/Insurance Company submitted that the Tribunal ought not to have relied upon Ex.A-4/Accident Register and Ex.A11/disability certificate in letter and spirit, in arriving at the compensation towards loss of income. She further submitted that the amounts awarded by the Tribunal under different heads are excessive and exorbitant when compared to the injuries sustained by the first respondent. However, she has not disputed the finding of the Tribunal in respect of negligence.

5.Heard the learned counsel for the Appellant/Insurance Company and perused the materials available on record carefully and meticulously.

6.Though this appeal was admitted way back in the year 2009, the Appellant/Insurance Company has not taken steps to serve papers on the first respondent, even at this distant point of time. However, considering the paucity of time, this Court is inclined to dispose of this appeal, on merits.

7.Since the learned counsel for the appellant has not questioned 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 driving of the driver of the lorry insured with the appellant herein, need not be interfered with by this Court.

8.As regards the quantum of compensation awarded by the Tribunal, PW.1/first respondent/claimant has deposed in his evidence that due to the accident, he has suffered fractures on the left clavicle bone and also fractures on 4,5,6 and 7th ribs and also grievous injuries on the head and neck; that he initially took treatment in the Government Hospital, Cuddalore and subsequently in Krishna Hospital, Cuddalore for a period of seven days. PW.2 /Doctor has deposed in his evidence that Ex.A.11/permanent disability certificate was issued by him. Ex.A.12 is the X-ray. As per his evidence, the first respondent/claimant sustained fractures on the left clavicle and fractures on 4,5 and 6th ribs (on the left side); the first respondent has also suffered malunion of the bone in the left shoulder and as a result of the same, the first

respondent/claimant is unable to carry weight and he suffers pain while breathing and performing his day to day activities. Considering the oral and documentary evidence adduced by the first respondent/claimant, the Tribunal has rightly awarded a sum of Rs.2,34,000/- (Rs.3,000x12x13x50%) towards loss of income for 50% disability, fixing the monthly income of the claimant at Rs.3,000/- notionally, in the absence of any evidence adduced to show that he was earning Rs.10,000/- per month as a civil contractor and agriculturist. That apart, the Tribunal has awarded Rs.4,248/- towards post medical expenses (Ex.A8), Rs.5,000/- each towards transportation charges, future medical expenses, medical attendant's charges, extra nourishment and Rs.10,000/- each towards stress and mental agony and pain and suffering, which this Court is not inclined to interfere with, as the same are fair and reasonable, by considering the nature of the injuries sustained and the period of treatment undertaken by the first respondent/claimant.

9.In the result, the appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The Appellant / Insurance Company is directed to 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 first respondent / claimant is permitted to withdraw the same on making proper application before the Tribunal.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

kv/rk

To

1. Motor Accident Claims Tribunal, Principal Subordinate
Judge, Cuddalore.
2. The Section Officer,
V.R. Section, High Court, Madras.

C.M.A.No.1754 of 2009 and
M.P.No.1 of 2009

SJ(CO)
SP(08/06/2020)