

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.NO.2308 OF 2010

and

M.P.No.1 of 2010

Divisional Manager

United India Insurance Co. Ltd.

Cuddalore

...Appellant /2nd Respondent

Vs.

1.Jayakumar ...1st Respondent /Claimant

2.Sridevi ...2nd Respondent /1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, to set aside the decree and judgment dated 21.03.2006 made in MCOP No.588 of 2005 on the file of the Additional District Judge, FTC No.2, Cuddalore.

For Appellant : Mr.M.J.Vijaya Raghavan

For Respondents : Ms.M.Shakkira Banu for R1  
No appearance for R2.

JUDGMENT

The appellant United India Insurance Company Ltd., Cuddalore, is the second respondent in MCOP No.588 of 2005 on the file of the Additional District Judge, FTC No.2, Motor Accidents Claims Tribunal, Cuddalore.

2. The first respondent / claimant filed the above Claim Petition under Section 166(1) of the Motor Vehicles Act, seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident that took place on 01.07.2003. According to him, when he was riding his two wheeler TVS 50 moped along Uppalavadi Road, Cuddalore, a speeding lorry bearing

registration No.TN 63 6099 belonging to the second respondent and insured with the present appellant hit him, as a result of which, he sustained injuries all over his body. The further contention of the claimant is that the rash and negligent driving of the driver of the lorry bearing registration No.TN 63 6099 was the cause of the accident and that since the said lorry was insured with the present appellant / Insurance Company, both of them are jointly and severally liable to pay compensation of Rs.10,00,000/- to him.

3. The owner of the lorry remained absent before the tribunal and therefore, he was set exparte. The present appellant/ United India Insurance Company contested the claim petition.

4. The learned Additional District Judge (Fast Track Court 2), Cuddalore, after analysing the evidence on record awarded a compensation of Rs.2,08,950/- to the first respondent / claimant together with interest at the rate of 7.5% per annum from the date of claim petition.

5. Aggrieved over the quantum of compensation awarded by the Tribunal, the United India Insurance Company Limited, Cuddalore, has filed the present appeal.

6. Mr.M.J.Vijaya Raghavan, learned counsel appearing for the appellant would contend that the tribunal had adopted multiplier method in the instant case when the appellant had sustained a simple fracture of both bones in right leg and that the percentage of disability was not included while calculating the loss of earning capacity.

7. Per contra, Ms.M.Shakkira Banu, learned counsel appearing for the first respondent / claimant would contend that the tribunal after considering various aspects awarded a just compensation of Rs.2,08,950/- with interest at the rate of 7.5% per annum from the date of claim petition and the same need not be disturbed at this juncture.

8. A perusal of the medical record shows that the first respondent/claimant has sustained a fracture of both bones in right leg and Dr.R.Venugopal (P.W.2) has assessed the partial permanent disability as 35%. However, the tribunal while calculating the loss of earning capacity fixed the income of the

claimant as Rs.1,000/- and adopted multiplier of 13 and awarded a sum of Rs.1,56,000/- for loss of earning capacity (Rs.1,000/- x 12 x 13). As rightly pointed out by the learned counsel for the appellant, the percentage of disability has not been included while calculating the loss of earning capacity. In any event, the first respondent/claimant was a painting contractor by profession and there is no functional disability as far as the instant case is concerned and therefore, adopting multiplier method is not warranted. Therefore, in the considered opinion of this court, awarding a sum of Rs.1,000/- per percentage would meet the ends of justice and Rs.35,000/- (1000 x 35) is awarded towards loss of earning capacity. The contention of the first respondent/claimant is that he was earning a sum of Rs.6,000/- per month. Since no documentary evidence was adduced to show that he was actually earning a sum of Rs.6,000/- per month, his notional income is fixed as Rs.4,500/- per month. The first respondent/claimant could not have attended his regular work atleast for three months and therefore, a sum of Rs.13,500/- (Rs.4,500/- x 3) is awarded towards loss of income. Apart from the above amounts, a sum of Rs.10,000/-, Rs.5,000/-, Rs.2,000/-, Rs.2,000/-, Rs.27,950/- are awarded towards pain and sufferings, extra nourishment, transportation, attender's charges, medical expenses, respectively. The award passed by this court under various heads is extracted hereunder.

| Sl.No. | Head                     | Amount (Rs.) |
|--------|--------------------------|--------------|
| 1.     | Loss of earning capacity | 35,000/-     |
| 2.     | Pain and sufferings      | 10,000/-     |
| 3.     | Extra nourishment        | 5,000/-      |
| 4.     | Transportation           | 2,000/-      |
| 5.     | Attender's charges       | 2,000/-      |
| 6.     | Medical expenses         | 27,950/-     |
| 6.     | Loss of income           | 13,500/-     |
|        | Total                    | 95,450/-     |

9. In the result,

(i) The appeal is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

(ii) The quantum of compensation of Rs.2,08,950/- awarded by the tribunal in MCOP No.588 of 2005 on the file of the Additional District Judge, FTC No.2, Cuddalore, dated 21.03.2006

is scaled down to Rs.95,450/- (Rupees Ninety Five thousand Four Hundred and Fifty only) with interest at the rate of 7.5% per annum from the date of claim petition.

(iii) The appellant Insurance company is at liberty to withdraw the amount deposited by them before the tribunal over and above the award passed by this Court.

(v) The first respondent / claimant is entitled to withdraw the amount awarded by this court, after following due process of law.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

bga

To

1) The Additional District Judge (FTC No.2),  
Motor Accidents Claims Tribunal, Cuddalore.

copy to: The Section Officer,  
VR Section, High Court, Madras.

+1 cc to Mr.R.Sreedhar, Advocate, S.R.No.8862

+1 cc to Mr.M.J.Vijayaraghavan, Advocate, S.R.No.9056

C.M.A.NO.2308 OF 2010  
and  
M.P.No.1 of 2010

SV(CO)  
SSM(10/06/2019)

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