

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1387 of 2013

The Oriental Insurance Company Ltd.,
Branch Office,
No.3, Sidda Veerappa Chetti Street,
Dharmapuri Town Taluk and District.

...Appellant/2nd Respondent

Vs

1. Kumar

...Petitioner/Respondent

2. K.Arul

...Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 23.07.2012 in MACTOP No.9 of 2009 passed by the Motor Accidents Claims Tribunal (Additional District Judge), Dharmapuri.

For Appellant : Mr.M.Krishnamoorthy
For 1st respondent : Mr.M.Selvam
For 2nd respondent : Exparte

J U D G M E N T

The Appellant Insurance company has come forward with this appeal, challenging the order of the Motor Accidents Claims Tribunal, Dharmapuri in M.A.C.O.P.No.9 of 2009 dated 23.07.2012, contending that the amount of compensation awarded under different heads are excessive.

2.Brief facts which are necessary for disposal of this appeal are as follows:-

On 11.04.2008 at about 08.30 P.M., the first respondent claimant was riding his T.V.S.Motor Cycle bearing Registration No.TN 29 AA 0424 in Narthampatti Match Factory, the second respondent was driving a Van bearing registration No.TN 29 AA 8917, which came from the opposite direction, in a rash and

negligent manner, hit the claimant, due to which, the claimant had fallen down and sustained injuries on fractures of middle finger and ring finger and fracture at the proximal shaft of 5th meta carpal bone on the right hand. At the time of accident, the claimant was aged about 18 years. Alleging that the accident was due to negligent driving of driver of the van, the claimant had filed a Petition under Section 166 M.V.Act, claiming compensation of Rs.7,50,000/-.

3. Before the Tribunal, during the trial, in order to prove his case, the claimant has examined as many as two witnesses viz., P.W.1 and P.W.2 and he has marked as many as 11 documents viz., Ex.P1 to Ex.P11. On the side of the respondents therein, no one was examined and no documents was adduced. After analyzing the oral and documentary evidences, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the Van. The Tribunal has awarded a sum of Rs.3,04,531/- as compensation to the claimant.

4. Aggrieved against the order of the Tribunal, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal before this Court for reduction of the compensation.

5. The learned counsel for the appellant/Insurance Company would submit that the Tribunal has erred in fixing the liability on the appellant Insurance Company, since the driver of both the vehicles, did not possess any valid driving license at the time of the accident and the Tribunal has erred in holding that the accident had occurred only due to the rash and negligent driving of the driver of the Van. The learned counsel would further submit that the quantum of compensation awarded by the Tribunal is excessive and there is no basis for awarding such a huge amount as compensation to the claimant.

6. The learned counsel for the first respondent - claimant would submit that the Tribunal has correctly considered the materials and evidence on record and has correctly fixed the negligence on the driver of the Van. It is also submitted that the compensation awarded by the Tribunal is just, fair and reasonable and hence the same does not require any interference in the hands of this Court.

7. Heard the learned counsel for the appellant-Insurance Company and the learned counsel for the first respondent and also perused the materials available on record.

8. The first respondent was examined as P.W.1 before the Tribunal. He deposed before the Tribunal that the accident had

occurred only due to the rash and negligent driving of the driver of the Van. Since there was no valid rebuttal evidence on the side of the appellant Insurance Company before the Tribunal with regard to negligence aspect and the evidence of P.W.1 remained unchallenged, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the Van bearing Reg.No.TN-29-AA-8917. This Court is not inclined to interfere with the said finding.

9.The details of the compensation awarded by the Tribunal are as follows:

Heads	Amount awarded by the Tribunal (Rs.)
Loss of Income	2,16,000/-
Pain and suffering	10,000/-
Transport	5,000/-
Extra Nourishment	5,000/-
Medical Bill	68,531/-
Total	3,04,531/-

10. In this regard, the learned counsel appearing for the appellant/Insurance Company has mainly disputed the amount awarded by the Tribunal towards loss of income at Rs.2,16,000/-. He specifically submitted that the Tribunal has erred in awarding the same to the claimant, who is aged about 18 years, by adopting 18 multiplier to fix a sum of Rs.5,000/- as monthly income and the same is on the higher side. The learned counsel for the first respondent claimant submitted that the Tribunal has not awarded any amount towards permanent disability and damages to clothes. Considering the nature of injuries and disability suffered by the claimant, this Court is inclined to grant a sum of Rs.40,000/- towards permanent disability and Rs. 1,000/- towards Damages to clothes. The amount awarded by the Tribunal towards pain and suffering at Rs.10,000/- stands modified to Rs.20,000/- and Rs.5,000/- stands modified to Rs.10,000/- towards transport. The amount awarded towards medical expenses is confirmed.

11. The amount of compensation of Rs.3,04,531/- is reduced to Rs.2,01,537/- under the following heads :-

Heads	Amount awarded by this Court (Rs.)
Loss of Income	60,000/-

Pain and suffering	20,000/-
Transport	10,000/-
Extra Nourishment	2,000/-
Medical Bill	68,531/-
Permanent disabilities	40,000/-
Damage to clothes	1,000/-
Total	2,01,537/-

12. In the result, the order of Tribunal in MACTOP No.9/2009 is modified and this appeal is partly allowed. The Compensation amount of Rs.3,04,531/- is reduced to Rs.2,01,537/- with interest at 7.5% per annum from the date of petition till the date of realization. The appellant -Insurance Company and the second respondent [owner of the van] are directed to deposit the entire award amount as ordered by this Court with interest jointly or severally, after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rli

To
The Motor Accidents Claims Tribunal/
(Additional District Judge),
Dharmapuri.

Copy to
The Section Officer,
VR Section, High Court, Madras.

+1 cc to M/s.M.Selvam, Advocate Sr.No. 101856
+1 cc to M/s.M.Krishnamoorthy, Advocate Sr.No. 101721

C.M.A.No.1387 of 2009

RP (CO)
RMP (11/01/2021)