

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.998 of 2009

and

M.P.No.1 of 2009

The New India Assurance Co.Ltd.,
3rd Party Motor Claims Cell,
No.46, Moore Street,
Chennai-1.

...Appellant

Vs

1.R.Anandan

2.P.Asokan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and decree dated 14.07.2008 passed in M.C.O.P.No.479 of 2004, on the file of Motor Accidents Claims Tribunal, Sub-Court, Ponneri.

For Appellant : Mr.M.Krishnamoorthy

J U D G M E N T

This Appeal is preferred by the Insurance Company against the award of a sum of Rs.2,47,850/- towards compensation to the first respondent / claimant for the injuries sustained by him in a motor vehicle accident.

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

On 17.01.2004, at about 8.00 p.m., the first respondent / injured was riding his motorcycle bearing Registration No.TN-04-V-4896 on the extreme left side of the Kavarapettai to Sathyavedu Road. At that time, a Tractor bearing Registration No.TN-20-T-7292 belonging to the second respondent and insured with the appellant herein, came in a rash and negligent manner from the opposite direction and dashed against the motorcycle. Due to the said impact, he sustained grievous injuries. He filed a claim petition claiming a compensation of Rs.7,00,000/-. On a consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.2,47,850/-

with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant / Insurance Company has submitted that the Tribunal ought to have rejected the claim petition, as the complaint was lodged belatedly i.e., six days after the accident alleging that an unknown Tractor had dashed against the motorcycle; and it was not established as to how the 2nd respondent's Tractor insured with the appellant. The learned counsel also submitted that the Tribunal erred in awarding excessive sum of Rs.21,000/- as compensation towards loss of income for seven months; the Tribunal ought to have rejected the assessment of disability at 85% by PW.2/doctor, who did not follow any guidelines to arrive at such excessive percentage; the Tribunal, after having awarded compensation towards permanent disability, erred in awarding excessive amount of Rs.70,000/- towards loss of earning power; and the sum of Rs.53,000/- awarded towards pain and suffering is also excessive and exorbitant. Stating so, the learned counsel prayed to this Court to interfere with the award passed by the Tribunal.

5.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

6.This appeal was admitted way back in the year 2009. Till now, the appellant Insurance Company has not taken proper steps to serve papers to the other side. However, considering the passage of time, this Court is inclined to proceed with this appeal on merits.

7.From the materials available on record, it is seen that P.W.1/ injured has stated in his evidence that on 17.01.2004, due to the rash and negligent driving of the driver of the tractor, the accident had occurred; due to the same, he sustained grievous injuries, for which, he was admitted as in-patient at Government General Hospital, Chennai, from 17.01.2004 till 23.02.2004 and thereafter, has taken treatment as outpatient. The testimony of P.W.1 was corroborated by Ex.P1-First Information Report and Ex.P2-Accident Register. Further, Ex.P9-Criminal Court judgment proceeds to state that the driver of the tractor was responsible for the accident and he was convicted for the same. Placing reliance on those oral and documentary evidence and also considering the fact that as the first respondent/claimant took treatment in the hospital after the accident, he was not able to lodge the complaint immediately, the Tribunal has rightly come to the conclusion that the delay of 7 days in filing the First Information Report

was condoned; the accident was caused due to the rash and negligent driving of the driver of the tractor; and hence, the owner and the insurer of the tractor were liable to compensate the first respondent/claimant, which according to this Court, does not require any interference.

8.As regards the quantum of compensation awarded by the Tribunal, P.W.1/1st respondent/claimant deposed that he was earning Rs.7,000/- per month by working as a mason. But no document was produced to prove the same. In the absence of income proof, the Tribunal has fixed the monthly income of the injured aged 32, working as mason, at Rs.3,000/-. P.W.2/Doctor deposed that the 1st respondent/claimant sustained fractures in the shaft of humerus of right leg and femur of right leg, cut-deep wound in the right side of the face, dislocation of right shoulder, and laceration of 6x4 cm in right arm. Taking note of the nature of injuries, P.W.2/doctor assessed the disability at 90%. However, the Tribunal has taken only 85% and awarded Rs.85,000/- towards permanent disability, which, in the opinion of this Court, is just and reasonable and the same is hereby confirmed.

9.That apart, the Tribunal has awarded Rs.21,000/- (Rs.3000/- x 7 months) towards loss of income during and after the treatment period. Considering the fact that due to the injuries and disabilities suffered by the first respondent/claimant, he would have been disabled from doing his job for a period of seven months atleast, the amount so awarded is fair and just and hence, the same is hereby confirmed. Similarly, the sum of Rs.53,000/- awarded towards pain and suffering warrants no interference by this Court.

10.Further, the Tribunal has awarded Rs.1,500/- towards transportation, Rs.5,000/- towards extra nourishment, Rs.9,350/- towards medical expenses, Rs.3,000/- towards damage to clothes and motorcycle, which this Court is not inclined to interfere, taking into account the gravity of injuries suffered and the period of treatment taken by the first respondent/claimant.

11.The Tribunal has also awarded Rs.70,000/- towards loss of future earning capacity. Though it has been contended by the learned counsel for the appellant Insurance company that the amount so awarded is unwarranted, this Court is of the view that based on the evidence and materials adduced by the first respondent/claimant and also having regard to the facts and circumstances of the case, the Tribunal has awarded the said sum and hence, the same is hereby confirmed.

12.Thus, affirming the award passed by the Tribunal, this Civil Miscellaneous Appeal stands dismissed. No costs. The appellant-Insurance Company is directed to deposit the entire compensation amount, 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 shall transfer the amount lying in the deposit, to the bank account of the first respondent / claimant through RTGS within a period of one week thereafter. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

gbi / srk

To

1.The Sub-Judge,
Motor Accidents Claims Tribunal,
Ponneri.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 63664.

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C.M.A.No.998 of 2009

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

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