

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.02.2019

Pronounced on : 01.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1716 of 2011

and

MP.No.1 of 2011 and MP.No.1 of 2012

United India Insurance Company Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai - 13. ..Appellant / 2nd Respondent

Versus

1.P.Sathish Kumar ...1st Respondent / Petitioner

2.G.Magesh ...2nd Responden5 / 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 07.01.2011 and made in M.C.O.P.No.979 of 2008 on the file of the Motor Accidents Claims Tribunal (In the IV Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.A.A.Venkatesan (for R1)
Not ready in notice (for R2)

JUDGMENT

The present appeal has been filed by the Insurance Company challenging the award dated 07.01.2011 passed in M.C.O.P.No.979 on the file of Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai in and by which the appellant insurance company is liable to pay the compensation amount.

2.The 1st respondent herein is the claimant before the Tribunal. It is the case of the claimant that on 04.09.2007 at 01.30 hours, when he was walking inside the Harbour road from north to south direction, a Lorry bearing Registration No.TN-20-AY-9381 was owned by the 2nd respondent herein and insured with the appellant herein/Insurance Company, came in a rash and negligent manner from the opposite direction and dashed against

him, as a result of which, he sustained grievous injuries and other injuries all over the body. Hence, the claimant made a claim petition in M.C.O.P.No.979 of 2008 before the Tribunal, claiming for a sum of Rs.5 lakhs as compensation as against the owner of the vehicle as well as insurance company/appellant herein.

3.The appellant/Insurance company resisted the claim petition by filing a counter affidavit, denying the age, avocation and income of the claimant besides contended that the claimant had contributed to the accident and prayed for dismissal of the claim petition.

4.Before the Tribunal, the claimant examined himself as PW.1, one Dr.Saichandran as PW.2 and one eye witness as PW.3 and twenty seven documents were marked as Ex.P1 to P27. On the respondents side neither oral or documentary evidence was adduced.

5.Based upon the oral and documentary evidence, the Tribunal has come to the conclusion that the accident has took place due to rash and negligent driving of the driver of the lorry bearing Regn.No.TN-20-AY-9381. As regards the quantum, the Tribunal awarded a sum of Rs.1,97,200/- which according to the Insurance Company is onerous. Therefore, the present appeal is filed by the appellant/Insurance Company challenging the quantum of compensation awarded by the Tribunal in favour of the claimant.

6.According to the learned counsel for the appellant, the Tribunal has directed the second respondent on behalf of the first respondent to pay the award amount of Rs.1,97,200/- as compensation without properly considering the nature of injuries sustained by the claimant. According to the learned counsel for the appellant, the amount awarded towards disability at Rs.80,000/- is highly exaggerated. The compensation has been awarded by the Tribunal by solely relying upon the evidence of Doctor/PW2, but, PW2 has not examined the claimant at all. The Tribunal also failed to consider that the disability assessed by the Doctor in respect of part of body or limb cannot be said to be a disability in respect of the whole body and therefore, the assessment of compensation by the Tribunal is excessive. Further, the amount of Rs.55,200/- towards loss of income and Rs.25,000/- awarded for pain and suffering are excessive and they require reduction. Therefore, the present appeal is filed by the appellant/Insurance company questioning the quantum.

7.Per contra, the learned counsel appearing for the first respondent would contend that the first respondent/victim was employed as a Constable of Central Industrial Security Force (CISF) and in order to prove the income, he has filed Ex.P16 and

P16 is the loss of pay, certificate. Further, the first respondent/claimant produced Ex.P4, medical records to show that he had taken treatment at Chennai Port Trust Hospital. That apart, Ex.P5 was the discharge summary issued by Apollo Hospital, Chennai where the claimant/first respondent had taken treatment from 05.09.2017 to 06.10.2017 for about a month. Above all, PW.2/Doctor was examined, who deposed that the claimant suffered Bimalleolar fracture on left ankle, burst wound at right leg and multiple abrasions all over his body. The Doctor has assessed the disability of the claimant at 25%. The claimant, being a Constable had taken long leave due to the injuries sustained in the accident and therefore, after recovery, the claimant was asked to appear before the Medical Board and the Medical Board considering the nature of injuries sustained by the claimant recommended for light duty. The claimant was aged 33 years, at the time of accident and taking note of the same, the Tribunal has awarded a fair and reasonable amount as compensation. Therefore, the learned counsel for the first respondent/claimant prayed for dismissal of the present appeal filed by the appellant/Insurance company.

8.I have heard, the learned counsel appearing on either side and perused the materials available on record.

9.After hearing the both side arguments, it is seen that the claimant was examined by PW.2/Dr.Saichandran, who has categorically stated that the victim has suffered Bimalleolar fracture on his left ankle, burst wound at right leg, multiple abrasions over right leg and multiple injuries all over the body. Hence, he had taken treatment for one month as inpatient and subsequently, he has taken further continuous treatment on 11.09.2007 for Excision of necrosed skin at right leg and on 18.09.2007, Curettage and skin grafting was done. Ex.P10, medical prescription shows that he had undergone physiotherapy treatment. Ex.P11, Ex.P12, Ex.P17 to P22 and Ex.P27 were medical reports and certificates issued to the claimant. Ex.P25 is the disability certificate, issued by the PW.2/Doctor. Considering all these aspects, the medical board recommended to assign light work to the claimant in future. Thus, based upon the medical reports and the fact, that the claimant was 33 years old, at that time of accident, which was also proved by Ex.P14/copy of Identity Card and that the claimant was working as Constable in Central Industrial Security Force, the Tribunal determined the compensation payable to the claimant. The Tribunal has also taken note of salary certificate/Ex.P15 and fixed his monthly income of Rs.9,600/- and awarded a sum of Rs.1,97,200/- along with other conventional heads, which in the opinion of this Court is just and reasonable compensation to the victim/claimant. Therefore, I do not find any infirmity in the finding rendered by the Tribunal in fixing the compensation.

Furthermore, the Tribunal has also considered the Doctor's evidence and the assessment of percentage of disability given in Ex.P25 and awarded a sum of Rs.80,000/-, which is also reasonable. Thus, I do not find any scope to interfere with the award passed by the Tribunal, hence, the appeal is dismissed.

10.In the result, the Civil Miscellaneous Appeal filed by the appellant/Insurance company is dismissed by confirming the Judgement and Decree dated 07.01.2011 passed in M.C.O.P.No.979 of 2008 on the file of the Motor Accidents Claims Tribunal (In the IV Court of Small Causes), Chennai. The appellant/Insurance Company is directed to deposit the amount as determined by the Tribunal together with interest 7.5%, after adjusting amount, if any, already deposited within a period of eight weeks from the date of copy of this Judgment. On such deposit being made, the claimant/first respondent is entitled to withdraw the same with accrued interest, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

klr

To

1. The Motor Accidents Claims Tribunal
(In the IV Court of Small Causes), Chennai.

Copy to: The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to Mr.A.A.Venkatesan, Advocate, S.R.No.19002

+2 ccs to Mr.D.Bhaskaran, Advocate, S.R.No.16390, 19138

RGN(CO)
SSM(06/08/2019)

CMA.No.1716 of 2011

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