

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1816 of 2013

The Manager, Shevapet BO (720403),
The New India Assurance Company Limited,
D.No.17, II Floor,
Fort Main Road, Shevapet,
Salem - 2. .. Appellant/3rd Respondent

.Vs.

1.Dharmaraj
2.P.Selvaraj
3.S.Sathish .. Respondents/Petitioner/ Respondents 1 &
2
(2nd & 3rd Respondents herein were set
exparte by the Court below)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 23.04.2012 passed in M.C.O.P.No.520 of 2010 on the file of the Motor Accident Claims Tribunal / Vth Additional District Court, Bhavani, Erode District.

For Appellant : Mr.C.Ramesh Babu

For R1 : Mr.C.Kulanthaivel

For RR 2 & 3 : No appearance

J U D G M E N T

The appellant / New India Assurance Company Limited is the third respondent in M.C.O.P.No.520 of 2010 on the file of the Motor Accident Claims Tribunal / Vth Additional District Court, Bhavani, Erode District. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident on 09.09.2010.

2. The case of the claimant is that on 09.09.2010, he was travelling in a car bearing Registration No. TN 39 P 5747 on Bhavani - Salem Main Road and at about 08.20 P.M., a speeding lorry bearing Registration No. TN 27 F 6756 hit the car, as a result of which, he sustained multiple injuries. According to the claimant, the rash and negligent driving of

the driver of the lorry belonging to the third respondent was the cause of the accident and that since the said lorry was insured with the appellant / New India Assurance Company Limited, the driver, owner and the insurer of the lorry are jointly and severally liable to pay compensation.

3. The driver and the owner of the lorry (second and third respondents) remained absent before the Tribunal, and therefore, they were set *exparte*. The appellant / New India Assurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Vth Additional District Judge / Motor Accident Claims Tribunal, Bhavani, Erode, after analysing the evidence on record, awarded a compensation of Rs.3,78,318/- together with interest at the rate of 7.5% per annum to the claimant. Questioning the quantum of compensation awarded by the Tribunal, the appellant / New India Assurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.C.Ramesh Babu, learned counsel appearing for the appellant contended that though there is no functional disability, the Tribunal has wrongly adopted multiplier method and awarded an exorbitant amount of Rs.3,78,318/- to the claimant, especially, when the injuries sustained by him do not have any direct impact on his earning capacity. He therefore, prayed for scaling down the award passed by the Tribunal.

5. Heard Mr.C.Kulanthaivel, learned counsel appearing for the first respondent / claimant. No appearance on behalf of the respondents 2 and 3.

6. A perusal of the records shows that the first respondent / claimant has sustained the following injuries:

- (i) Fracture of left hand wrist and fingers.
- (ii) Contusion, blood injury over face, stomach and chest.
- (iii) Abrasion over the right hand.

Dr.R.Krishnasamy (P.W.4) has assessed the partial permanent disability as 40% and the Tribunal had adopted multiplier method and awarded a sum of Rs.3,45,600/- towards loss of earning capacity. The accident took place in the year 2010 and therefore this Court is of the opinion that awarding a sum of Rs.2,000/- per percentage of disability would meet the ends of justice as there is no functional disability. Hence, a sum of Rs.80,000/- is awarded towards partial permanent disability. The notional income of the claimant is fixed as Rs.4,500/- per month. On account of the accident, he would not have been in a position to attend to his routine work atleast for three months and therefore a sum of Rs.13,500/- (Rs.4,500/- X 3 months) is awarded towards "loss of income". The award passed

by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Partial permanent disability	Rs.80,000/-
2.	Medical expenses	Rs.10,718/-
3.	Loss of income	Rs.13,500/-
4.	Pain and sufferings	Rs.10,000/-
5.	Extra nourishment	Rs.5,000/-
6.	Transportation	Rs.5,000/-
7.	Attender's charges	Rs.2,000/-
8.	Damage to clothes	Rs.500/-
Total		Rs.1,26,718/-

7. Thus, the compensation awarded by the Tribunal is scaled down from Rs.3,78,318/- to Rs.1,26,718/- which would carry interest at the rate of 7.5% per annum.

8. The learned counsel for the appellant / New India Assurance Company Limited contended that the entire amount awarded by the Tribunal has been deposited by them. If the first respondent / claimant had already withdrawn the amount, the appellant / New India Assurance Company Limited is at liberty to recover the amount over and above the Award passed by this Court from him on the same cause of action.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is scaled down from Rs.3,78,318/- to Rs.1,26,718/-.

(iii) The appellant / New India Assurance Company Limited is directed to deposit the compensation amount i.e., Rs.1,26,718/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.520 of 2010 on the file of the Motor Accident Claims Tribunal / Vth Additional District Court, Bhavani, Erode District, (less the amount already deposited by them) within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the claimant / first respondent is at liberty to withdraw the same after following due process of law.

(v) The appellant / New India Assurance Company Limited is entitled to withdraw the excess amount paid by them over and above the amount awarded by this Court.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
The V Additional District Judge,
Bhavani,
Erode District.

2.The Section Officer,
VR Section,
High Court of Madras.

+1 cc to Mr.C.RameshBabu, Advocate, sr.97488

+1 cc to Mr.C.Kulanthaivel, Advocate,sr.96927.

nmi(co)
krd 18/9

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