

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.08.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2628 of 2011
and
M.P.No.1 of 2011

The Branch Manager,
ICICI Lombard General Insurance
Company Ltd., Swarnamugi Plaza,
S.F.No.6/5, Block No.7, Ward-C
Omalar Main Road,
Near Bus stand, Salem 636 009. ...Appellant/2nd respondent

Vs

1.P.Dhamodharan ...Respondent/Petitioner
2.M.Kannappan ...Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and decree dated 23.09.2010 made in MCOP No.1179 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Krishnagiri.

For Appellant : Mrs.R. Sreevidhya

For R2 : Exparte

JUDGMENT

Challenging the quantum of compensation awarded by the Tribunal, the appellant insurance company has preferred this appeal.

2.The case in brief, is as follows:

On 03.04.2007 night, the first respondent/claimant was proceeding in his TVS 50 XL Moped bearing Registration No.AP03-D-2575 on Kuppam to Krishnagiri Road. When he was nearing Rajiv Colony, a lorry bearing Registration No.KA-01-C-2533 belonging to the 2nd respondent and insured with the appellant insurance company came in a rash and negligent manner and hit the moped from behind. Due to the said impact, the first respondent sustained grievous injuries. Stating so, he filed a

claim petition claiming a sum of Rs.7,00,000/- as compensation. On a consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.4,49,916/- with interest at the rate of 7.5% p.a., from the date of petition. Aggrieved over the same, the appellant has come up with this appeal.

3.The learned counsel for the appellant has disputed only the quantum of compensation determined by the Tribunal. According to her, the Tribunal has erred in awarding an exorbitant sum of Rs.4,02,098/- under the head "loss of income due to disability" by adopting the multiplier method and hence, the same has to be reduced substantially.

4.Heard the learned counsel on the side of the appellant and perused the materials available on record carefully and meticulously.

5.Though this appeal was admitted way back in the year 2011, the appellant has not taken proper steps to serve papers on the respondent/claimant. However, considering the passage of time, this Court is inclined to proceed with the appeal on merits.

6.There is no dispute with regard to the findings of the Tribunal on negligence on the driver of the lorry and the liability fastened on the appellant insurance company. What was disputed herein is the quantum of compensation. The first respondent/claimant examined himself as P.W.1. He deposed that he was working as police constable and his salary was Rs.10,154/- p.m. Ex.P4 is the salary slip. The injuries sustained by him was substantiated by the evidence of P.W.2/Dr.D.V.Gandhi, who assessed the disability at 50%. The doctor has further deposed that due to his disablement, the first respondent finds difficult to sit, stand, run, squat, climb steps and carry weights on his left hand and that he could not do his work as done before. But the Tribunal has taken the disability of the claimant only at 30%, since the doctor has examined the injured after 2 ½ years after the accident. Ex.P8 is the disability certificate and Ex.P6 is the medical bills. Based on the oral and documentary evidence adduced by the first respondent/claimant, the Tribunal has taken the gross salary at Rs.10,154/- and arrived at the annual income at Rs.1,21,848/-. Placing reliance on the decision of this Court in 2010(1)TNMAC 548, the Tribunal has adopted the multiplier of 11 and awarded the compensation under the head "loss of income" at Rs.4,02,098/- [Rs.1,21,848/- x 11 x 30%], which is just and reasonable and hence, the same does not call for any

interference by this Court. Further, the Tribunal has awarded Rs.15,000/- towards pain and suffering, Rs.27,818/- towards medical bills and Rs.5,000/- towards transport and extra-nourishment, which, in the opinion of this Court, are just and quite reasonable, considering the nature of the injuries and having regard to the facts and circumstances of the case and hence, the same do not warrant any interference.

7.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The appellant insurance company is directed to deposit the award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to 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.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

srk/smn/rk

To

1.The Motor Accidents Claims Tribunal
Chief Judicial Magistrate, Krishnagiri.

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

+1 cc to Mrs.R.Sreevidhya Advocate sr75791

C.M.A.No.2628 of 2011
and
M.P.No.1 of 2011

vgII(co)
aa05/06/2020

WEB COPY