

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.2953 OF 2011

AND

M.P.NO.1 OF 2011

The New India Assurance Co.Ltd.,
Rep.by its Branch Manager,
Amman Complex, E.V.N.Road,
Erode.

... Appellant/2nd Respondent

Vs

1.M.Jeeva ... 1st Respondent/Petitioner

2.V.P.Balasivakumar ... 2nd Respondent/1st Respondent

Prayer:-

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 30.01.2009 made in MCOP No.1287 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court.IV, Coimbatore at Tiruppur.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Mr.MA.P.Thangavel

For R2 : Ex-parte

JUDGMENT

This appeal has been preferred by the appellant Insurance Company against the award of a sum of Rs.4,08,274/- towards compensation to the first respondent/claimant due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On fateful day, ie. on 05.11.2006, around 17.00, the first respondent was going by a vehicle bearing Reg.No.TN-36-H-3425 from East to West in the Kavuniampadi to Sathy road near Marappampalayam Privu in front of Palanisamy Gounder home. At

that time, a car bearing Reg.No.TM-Y-9999, was driven by the car driver in the regular course of employment from West to East in a rash and negligent manner without adhering the traffic regulations and dashed against the first respondent/claimant. Due to the said impact, the first respondent sustained grievous injuries at right hand fracture, right humerus fracture, right side head, left hand and injuries all over the body. Immediately, he was taken to the G.H.Gobi, Senthil Hospital, Erode and then to P.S.G.Hospital, Coimbatore, and admitted as in-patient and he was undergoing treatment for one month still the first respondent/claimant is undergoing treatment. Hence, the first respondent filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.4,08,274/- 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 erred in awarding excessive sum of Rs.4,08,274/- as compensation for the fracture of frontal and fore arm. The Tribunal ought to have rejected the assessment of disability by PW2/doctor at the excessive rate. The notional income was fixed by the Tribunal at Rs.4,000/- is also on the higher side. The Tribunal ought to have followed the principle laid down by the Division Bench of this Court in the judgment reported in 2005 1 TN MAC 87 [United India Insurance Company vs. Veluchamy] while applying multiplier method. The multiplier adopted by the Tribunal '17' is not correct and prayed for reducing the compensation awarded by the Tribunal. He further submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.The learned counsel for the first respondent/claimant has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference in the hands of this Court.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.In counter statement filed by the appellant/Insurance Company before the Tribunal, it is averred that the first respondent has to prove that the driver of the second respondent bearing Reg.No.TM-Y-9999 drove the Car in a rash and negligent manner and caused the accident. The second respondent did not file any claim form and did not give any intimation regarding

the alleged accident to the appellant/Insurance Company, thus, the appellant is not liable to pay any compensation to the first respondent. The first respondent failed to produce the medical certificate for the permanent disability sustained by him. The first respondent failed to produce the document to prove his loss of earnings, medical expenses, pain and suffering, permanent disability.

8. From the materials on record, it is seen that the first respondent was examined as P.W.1 and in his evidence he deposed that he was riding his vehicle from East to West in the Kavuniampadi to Sathy road near Marappampalayam Privu in front of Palanisamy Gounder home. At that time, a car bearing Reg.No.TM-Y-9999, was driven by the car driver in the regular course of employment from West to East in a rash and negligent manner without adhering the traffic regulations and dashed against the first respondent/claimant and caused accident. Considering the complaint registered by the Kavundapadi Police Station in Crime No.447 of 2006 under Sections 279, 337 of IPC, the Tribunal observed that the occurrence of the accident has been correctly described in the first instance itself. Further, there is no evidence let in by the appellant/Insurance Company to prove that the accident occurred only due to the rash and negligent driving by the first respondent. The Tribunal considering the evidence of P.W.1, held that the driver of the car should have anticipated the movement of the injured and should have cautiously driven the car. Therefore, in my opinion, the Tribunal has rightly held that the accident occurred only due to the rash and negligent driving by the driver of the car insured with the appellant Insurance Company and there is no error in the said findings warranting interference by this Court.

9. As far as quantum of compensation is concerned, P.W.2/Doctor certified percentage of disability suffered by the first respondent/claimant as 48.2%. The Tribunal fixed the percentage of disability suffered by the first respondent as 43% and fixed a sum of Rs.4,000/- per month as the notional income of the first respondent. The Tribunal fixed the age of the first respondent as 23 years as per Ex.P3/medical bills. The Tribunal considering the nature of injuries and avocation of first respondent, applied multiplier method. By applying multiplier of '17', the Tribunal has awarded a sum of Rs.3,50,880/- towards loss of earning power due to disability, Rs.5,000/- towards pain and suffering, Rs.5,000/- towards extra nourishment, Rs.200/- towards damage to clothes, Rs.3,500/- towards transportation and as per Ex.P3/medical bills Rs.43,694/- towards medical expenses. The Tribunal after considering the entire materials on record, awarded a total sum of Rs.4,08,274/- as compensation to the first respondent/claimant. I do not find any error in the award of the Tribunal warranting interference by this Court.

10.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the 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 six 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(CS V)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court. IV,
Coimbatore at Tiruppur.
2. The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.103964

+1cc to Mr.MA.P.Thangavel, Advocate, S.R.No.104270

C.M.A.No.2953 of 2011
and M.P.No.1 of 2011

SJ(CO)
CS/27/07/2020

सत्यमेव जयते

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