

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2150 of 2013

and

M.P.No.1 of 2013

1.M/s.The New India Assurance Co. Ltd.,
Represented by its Branch Manager,
No.592, Obli Towers, 4th Floor,
D.B.Road, R.S.Puram,
Coimbatore-641 002.

2.M/s.New India Assurance Co. Ltd.,
Represented by its Branch Manager,
Amman Complex, 1st Floor,
E.V.N.Road, Erode-630 011.

... Appellants/ Respondents3&4

vs.

1. Mr.Sekar .. Respondent/ Petitioner

2. Mr.R.Govindasamy

3. P.Gopal ... Respondents2&3/
Respondents2&3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 02.07.2012 made in M.C.O.P.No.223 of 2010 on the file of the Motor Accidents Claims Tribunal/Subordinate Court, Bhavani.

For Appellants : Mr.M.B.Gopalan

For Respondents: Mr.C.Kulanthaivel for R1

No Appearance for R2 and R3

J U D G M E N T

The appellants are the third and fourth respondents in M.C.O.P.No.223 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Bhavani. The 1st respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.25,00,000/- for the injuries sustained by him in a road accident on 23.01.2010.

2. The case of the claimant is that on 23.01.2010, he was travelling in a Car bearing Registration No.KA-03-ME-2456 on Bhavani - Mettur Main Road and at about 7.45 p.m., a speeding tanker lorry bearing Registration No.TN-38-AL-6954 hit the

car, as a result of which, he sustained grievous injuries. According to the claimant, the accident took place due to the rash and negligent driving of the driver of the tanker lorry bearing Registration No.TN-38-AL-6954, belonging to the second respondent and that since the said lorry was insured with the first appellant, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

3. The learned Motor Accident Claims Tribunal / Subordinate Court, Bhavani, after analysing the evidence on record, awarded a compensation of Rs.4,85,000/- together with interest at the rate of 7.5% per annum. Questioning the quantum of compensation awarded by the Tribunal, the appellants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.M.B.Gopalan, learned counsel appearing for the appellants and Mr.C.Kulanthaivel, learned counsel appearing for the first respondent. No appearance for the second and third respondents.

5. In the claim petition, it is contended that the claimant was aged 39 years on the date of the accident and was doing upholstery works, earning a sum of Rs.15,000/- per month. A perusal of medical records shows that the claimant had sustained the following injuries:

- "1. Fracture of right Ulna.
2. Right Bimalleolar with ankle.
3. Wound over medial aspect of right foot.
4. Dislocation right hip.
5. Multiple facial injuries."

Dr.R.Krishnasamy (PW5) had assessed the partial permanent disability as 60%. The Tribunal fixed the disability as 25%, in respect of whole body, adopted multiplier method and awarded a sum of Rs.2,88,000/- towards 'loss of earning capacity'. The other heads awarded by the Tribunal are also just and reasonable and by no stretch of imagination, the award passed by the Tribunal can be said to be on the higher side. Therefore, the present appeal is liable to be dismissed.

6. In the result, the Civil Miscellaneous Appeal is dismissed and the decree and judgment dated 02.07.2012 made in M.C.O.P.No.223 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Bhavani is upheld. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssn
To

1. The Motor Accident Claims Tribunal,
Subordinate Court,
Bhavani.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+1cc to Mr.M.B.Gopalan , Advocate SR.No. 96189

+1cc to Mr.C.Kulanthaivel , Advocate SR.No. 14529

CMA.No.2150 of 2013
and

M.P.No.1 of 2013

bs co

A.SK(21/08/2020)