

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.NO.2409 OF 2013

AND

M.P.NO.1 OF 2013

The Branch Manager,
M/s. United India Insurance Company Limited,
Mayiladuthurai.

... Appellant

Vs.

1.Vinoth @ Vinoth Alagesan
2.P.Asik Ali
3.Vijayalakshmi

... Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 29.11.2012 passed in M.C.O.P.No.199 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Chidambaram.

Appellant	:	Mr.P.Sankaranarayanan
R1	:	No appearance
R2 & R3	:	No appearance Exparte

सत्यमेव जयते
J U D G M E N T

The appellant is the second respondent in M.C.O.P.No.199 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Chidambaram. The first respondent filed the claim petition under Section 166(1) of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 05.11.2007.

2. The case of the claimant is that on 05.11.2007, he was a pillion rider in a Hero Honda Motor Cycle bearing Registration No. TN 31 U 2833 on Chidambaram - Bhuvanagiri main road and that

when he was nearing Cholan Bus Depot, a speeding ambassador car bearing Registration No. TN 51 W 5995 hit him, as a result of which, he sustained injuries. His further contention is that he was immediately rushed to the hospital and that the accident was due to the rash and negligent driving of the driver of the ambassador car bearing Registration No. TN 51 W 5995 belonging to the second respondent and that since the said car was insured with the appellant / United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation.

3. The second respondent/owner of the vehicle remained absent before the Tribunal and therefore, he was set ex-parte. The appellant/United India Insurance Company Limited, contested the claim petition. The learned II Additional District and Sessions Judge/Motor Accident Claims Tribunal, Chidambaram, Cuddalore District after analysing the evidence on record, awarded a compensation of Rs.9,09,000/- together with interest at the rate of 7.5% per annum to the claimant. Aggrieved over the orders passed by the Tribunal, the appellant/United India Insurance Company Limited, has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Though many grounds were urged in this appeal, the learned counsel appearing for the appellant/United India Insurance Company Limited restricted his arguments only with regard to the quantum of compensation. His contention is that though the claimant sustained a simple fracture in his hand and was an engineer by profession, the Tribunal adopted multiplier method for awarding compensation especially when there is no functional disability. He therefore prayed for scaling down the compensation awarded by the Tribunal.

5. No appearance on behalf of the respondents.

6. A perusal of the medical records shows that the claimant sustained a simple fracture on his left upper arm and Dr.Gandhimathi (P.W.3) has assessed partial permanent disability as 20%. There is nothing to show that the claimant suffered permanent disability on account of the accident and therefore the Tribunal was wrong in adopting multiplier method in the instant case. It is also pertinent to point out that the claimant did not adduce medical bills. In the facts and circumstances, a sum of Rs.20,000/- towards partial permanent disability and a sum of Rs.10,000/- towards pain and sufferings are awarded. According to the claimant, he was an engineer earning a sum of Rs.45,000/- per month. In order to substantiate the same, the claimant relied on the Appointment Order issued by "Agilent Technologies, Private Limited", Bangalore (Ex.P5) and salary slip for the month of August 2007 (Ex.P6). The date of

accident is 05.11.2007. It is pertinent to point out that the claimant has not produced the salary slip immediately before the accident and therefore it cannot be held he was actually earning a sum of Rs.45,000/- per month on the date of accident. The notional income of the claimant is therefore fixed as Rs.7,500/- per month and he would not have been in a position to attend to his routine work atleast for one month and the claimant is entitled to a sum of Rs.7,500/- 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.20,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Extra nourishment	Rs. 2,000/-
4.	Loss of income	Rs. 7,500/-
5.	Transportation	Rs. 2,000/-
	Total	Rs.41,500/-

7. Thus, the compensation awarded by the Tribunal is scaled down from Rs.9,09,000/- to Rs.41,500/- which would carry interest at the rate of 7.5% per annum.

8. The quantum of compensation awarded by the Tribunal is not commensurate with the nature of injuries sustained by the claimant. The manner in which the Tribunal has decided upon the quantum of compensation suffers from logical reasoning. Arbitrariness is glaringly visible in the instant case. This court totally disapproves the decision of the Tribunal and deprecates such practice.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(ii) The compensation awarded by the Tribunal is scaled down from Rs.9,09,000/- to Rs.41,500/-.

(iii) The appellant/United India Insurance Company Limited is directed to deposit the compensation amount i.e., Rs.41,500/- 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.199 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Chidambaram, Cuddalore, (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 by the appellant/United India Insurance Company Limited, the claimant/first respondent is at liberty to withdraw the same after following due process of law.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The II Additional District and Sessions Judge,
Chidambaram, Cuddalore.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

C.M.A.No.2409 of 2013

PPA(CO)
CS/03/03/2020

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