

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.790 of 2011

The New India Assurance Co. Ltd.,
Branch Office, Bye-pass Road,
Dharmapuri Town & Taluk.

...Appellant/2nd Respondent

..Vs..

1.Govindasamy ... 1st Respondent/Petitioner

2.Thirumathi K.Roja ... 2nd Respondent/1st Respondent

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment in M.C.O.P.No.843 of 2008, dated 13.12.2010, on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate) at Dharmapuri.

For Appellant : Mr.M.Krishnamoorthy

For Respondents 1 and 2 : Mr.M.Selvam for R1
R2 - Exparte

JUDGMENT

The New India Assurance Company Limited, Dharmapuri has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 questioning the quantum of compensation awarded by the tribunal in M.C.O.P.No.843 of 2008 on the file of Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Dharmapuri.

2.The first respondent/claimant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 24.04.2007, when he was riding his bicycle along S.V. Road, Gandhi Nagar, Dharmapuri.

3.According to the first respondent/claimant, a speeding Tata van bearing Registration No. TN 29 AA 9609 belonging to the

second respondent hit his bicycle, as a result of which, he fell down and sustained injuries all over his body. It is his contention that the rash and negligent driving of the driver of the Tata van was the cause of the accident and that since the said vehicle was insured with the present appellant, both of them are jointly and severally liable to pay compensation to him.

4.The learned Chief Judicial Magistrate after analysing the evidence on record, awarded a compensation of Rs.1,80,500/- to the first respondent/claimant. Aggrieved over the orders passed by the tribunal, the New India Assurance Company Limited has filed the present appeal.

5.Mr.M.Krishnamoorthy, learned counsel appearing for the appellant would contend that when the injuries are simple in nature, the tribunal has committed an error in awarding a sum of Rs.1,80,500/-. He would also contend that a sum of Rs.20,000/-, Rs.20,000/- and Rs.25,000/- were awarded towards pain and sufferings, mental agony and loss of amenities respectively which are on the higher side when compared to the injuries sustained by the first respondent/claimant.

6.Per contra, Mr.M.Selvam, learned counsel appearing for the first respondent/claimant would contend that the tribunal after considering various aspects has awarded a just compensation and therefore, it need not be disturbed at this juncture.

7.A perusal of the wound certificate (Ex.P2) shows that the first respondent/claimant has sustained the following injuries:

- "1.Abrasion 3 x 2 cm over right fore arm.
- 2.Pain and swelling over hip joint.
- 3.Abrasion 2 x 1 cm over left elbow joint.
- 4.An abrasion 1 x 1 cm lower left knee joint
- 5.L4/L5 grade 1 listhesis with disc prolapses at L4/L5 with severe compression of dural and roots Lumber canalstenosis."

As per the wound certificate (Ex.P2), the fifth injury is grievous in nature and Dr.Sundharajan (P.W.2) has assessed the partial permanent disability as 40%. However, the tribunal has fixed the percentage of disability as 30% and awarded a sum of Rs.60,000/- towards partial permanent disability.

8. Except for the fifth injury, other injuries are simple in

nature and no surgical operation was performed. In the facts and circumstances, the award passed by the tribunal seems to be on the higher side and therefore is reduced to Rs.1,60,500/- as extracted hereunder:

Sl.No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs. 12,000/-	Rs. 12,000/-
2	Medical expenses	Rs. 35,500/-	Rs. 35,500/-
3	Extra nourishment	Rs. 4,000/-	Rs. 4,000/-
4	Transport expenses	Rs. 4,000/-	Rs. 4,000/-
5	Pain and sufferings	Rs. 20,000/-	Rs. 20,000/-
6	Permanent disability	Rs. 60,000/-	Rs. 60,000/-
7	Mental agony	Rs. 20,000/-	Rs. 10,000/-
8	Loss of Amenities	Rs. 25,000/-	Rs. 15,000/-
	Total	Rs.1,80,500/-	Rs.1,60,500/-

9. In the result,

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

(ii) The award of the Tribunal is scaled down to Rs.1,60,500/- from Rs.1,80,500/-.

(iii) The appellant insurance company is directed to deposit the entire award amount 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.843 of 2008, dated 13.12.2010, on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate) at Dharmapuri 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 first respondent/claimant is at liberty to withdraw the entire amount after following due procedure of law.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

mbi

To

The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal,
Dharmapuri.

+1cc to Mr.M.Selvam, Advocate, S.R.No.3784

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.3851

C.M.A.No.790 of 2011

SSD(CO)
CS/12/06/2019



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