

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.276 of 2013
and M.P.No.1 of 2013

The New India Assurance
Company Limited, Chennai. ... Appellant/2nd Respondent

..Vs..

1.Anand ...1st Respondent/Petitioner
2.Vasu
3.The National Insurance Company
Limited, Cuddalore. ...2nd & 3rd Respondents/
1st & 3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 05.03.2012 in M.C.O.P.No.65 of 2009 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Chidambaram.

For Appellant : Mr.M.Krishnamoorthy

For Respondent : Mr.T.Gopinath for
No.1 M/s. Rayan Law associates
R2 & R3 - Given up

JUDGMENT

The New India Assurance Company Limited, Chennai, is the second respondent in M.C.O.P.No. 65 of 2009, on the file of the Motor Accident Claims Tribunal, the learned Subordinate Judge, Chidambaram. They filed the present appeal questioning the quantum of compensation awarded by the tribunal vide its order dated 05.03.2012.

2. The first respondent/claimant filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident that took place on 28.06.2007.

3. On 28.06.2007, at about 03.30 hours, the claimant was riding his two wheeler bearing Registration No. TMZ 3154, on

T.Neduncherry main road from east to west direction. At that time, a speeding minidoor van bearing Registration No. TN 31 K 6622 belonging to the first respondent, hit the two wheeler, as a result of which, the first respondent/claimant sustained grievous injuries and the two wheeler bearing Registration No. TMZ 3154 got damaged.

4. According to the first respondent/claimant, the rash and negligent driving of the driver of the minidoor van bearing Registration No. TN 31 K 6622 belonging to the first respondent was the cause of the accident and that since, the said van was insured with the present appellant/the New India Assurance Company Limited, Chennai and the said two wheeler was insured with the third respondent and that they are jointly and severally liable to pay compensation to him.

5. The first respondent in M.C.O.P.No. 65 of 2009 remained absent before the tribunal and therefore, he was set ex-parte. The present appellant contested the claim petition. The learned Subordinate Judge, Chidambaram, after analysing the evidence on record, awarded a compensation of Rs.3,89,617/- together with interest at the rate of 7.5% per annum to the claimants.

6. Aggrieved over the orders passed by the tribunal, the New India Assurance Company Limited, Chennai filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Mr. T. Gopinath, learned counsel for the first respondent submitted that the award passed by the tribunal is just and proper.

8. Mr. M. Krishnamoorthy, learned counsel for the appellant, specifically contended that a sum of Rs.2,00,000/- towards pain and suffering is on the higher side and the same may be reduced.

9. Regarding the income of the claimant, the claimant stated in the claim petition that he was earning a sum of Rs.18,000/- through Government Service as well as a sum of Rs.15,000/- through private service and apart from that he was earning a sum of Rs.33,000/- additionally. But, in order to substantiate the same he did not produce any document except Ex.P18 has produced (Ex.P18) Salary certificate. The tribunal has fixed the monthly income of the first respondent/claimant as Rs.18,083/- based on the Salary Certificate (Ex.P18). The tribunal has calculated the loss of income only for six days. The Compensation awarded by the Tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of income (Rs.18,038/- x6/30)	Rs.3,617/-
2.	Transportation	Rs.20,000/-
3.	Extra Nourishment	Rs.30,000/-
4.	Damage to articles	Rs.10,000/-
5.	Medical expenses & Attender's charges	Rs.50,000/-
6.	Pain and suffering	Rs.2,00,000/-
7.	Permanent disability	Rs.76,000/-
Total		Rs.3,89,617/-

10. The learned counsel appearing for the appellant fairly submitted that except the compensation awarded a sum of Rs.2,00,000/- under the head pain and sufferings, the compensation awarded under all other heads are just and proper. No doubt, the Tribunal has not provided any reason for awarding a huge sum of Rs.2,00,000/- towards pain and sufferings. It requires some reduction. Considering the facts and circumstances of the case and nature of injuries, this Court is inclined to reduce the said amount from Rs.2,00,000/- to Rs.1,50,000/-. As far as the award passed under other heads are concerned, this court is not inclined to disturb the same. Thus, the revised compensation awarded by this court under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of income (Rs.18,038/- x6/30)	Rs.3,617/-
2.	Transportation	Rs.20,000/-
3.	Extra Nourishment	Rs.30,000/-
4.	Damage to articles	Rs.10,000/-
5.	Medical expenses & Attender's charges	Rs.50,000/-
6.	Pain and suffering	Rs.1,50,000/-
7.	Permanent disability	Rs.76,000/-
Total		Rs.3,39,617/-

Thus, the first respondent/claimant is entitled to a sum of Rs.3,39,617/- together with interest at the rate of 7.5% per

annum from the date of claim petition till the date of deposit.

11. 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 reduced from Rs.3,89,617/- to Rs.3,39,617/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The claimant is directed to pay the court fee for the compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) It is represented that the entire compensation awarded by the tribunal was already deposited by the appellant Insurance Company. The Insurance Company is at liberty to withdraw the award amount paid in excess of the award passed by this court. The Tribunal shall transfer the amount deposited by the Insurance Company to the claimant's bank account through RTGS within a period of two weeks thereon.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Sub Judge

The Motor Accidents Claims Tribunal,
The Subordinate Court,
Chidambaram.

2. The Section Officer,

VR Section, High Court,
Madras (+2 copies)

+1cc to M/s. Royan Law Associates, Advocate SR.15062

+1cc to Mr. M. Krishnamoorthy, Advocate SR.14272

BR (CO)

CB (07/04/2021)

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