

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.09.2018
Delivered on : 11.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.556 of 2015 and
MP.NO. 1 OF 2015

The Divisional Manager,
The New India Assurance Co. Ltd.,
No.1, Bharathi Road,
Cuddalore-607 001.

Appellant/2nd Respondent

Vs

1.K.Jayaveerapandian,
2.D.Kanchana ... Respondents/Petitioner & 1st Respondent
(2nd Respondent remained exparte)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in MACTOP.No.2596 of 2008 on the file of the Motor Accidents Claims Tribunal (II Additional Subordinate Judge) at Cuddalore dated 13.10.2014.

For Appellant : Mr.M.Krishnamoorthy
For Respondents: Mr.R.Bharathkumar (for R1)
R2 - Exparte

JUDGMENT

In an accident, which occurred on 29.09.2008 at about 14.30 Hrs., when the Claimant, K.Jayaveerapandian, was travelling as a passenger in NT Bus, bearing Registration No. PY 01 AJ 6400, from North to South, near Throwpathiamman Koil on Cuddalore Road, Mungampakkam, Pudhucherry, the Driver of the Bus, in a rash and negligent manner, was driving the Bus and applied break, all of a sudden, and as a result, the Claimant was thrown out of the Bus and sustained multiple grievous injuries. The Claimant was admitted in the Government Head Quarters Hospital, Cuddalore for treatment and due to the grievous injuries, the Claimant is permanently disabled and his earning capacity has

been reduced. The Claimant spent huge money towards treatment. The 2nd Respondent herein, is the owner of the vehicle, involved in the accident and the Appellant/Insurance Company, being the Insurer of the subject vehicle, both are jointly and severally liable to pay the compensation of Rs.7,00,000/- with interest to the Claimant.

2.The Insurance Company opposed the Claim Petition before the Tribunal contending that the accident happened only due to the carelessness and negligence of the Claimant, who was travelling in the rear foot-board, lost control and fell down and sustained grievous injuries. Further, it is contended that the driver of the Bus could not avoid the accident, inspite of his best efforts. The Award of compensation to the Claimant is excessive and the Claimant has to prove his age, occupation and monthly income, medical expenses, nature of injuries etc., and the Insurance Company is not responsible for the accident and prayed for dismissal of Claim Petition.

3.Before the Tribunal, in support of the claim, the Claimant examined two witnesses and marked Ex.P1 to Ex.P8 on his side. On the side of the Insurance Company, no witnesses were examined and no documents were marked.

4.Taking note of the oral evidence of PW-1, the Claimant, and PW-2, Doctor and after considering the Ex.P1 to Ex.P8, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving of the Driver of Bus, bearing Registration No.PY-01-AJ-6400, and awarded a sum of Rs.3,33,500/- as compensation to the Claimant with interest @ 7.5% p.a. from the date of filing of the Claim Petition, till the date of deposit under the following Heads:-

a) Loss of earning capacity	Rs.2,70,000/-
b) Transport to Hospital	Rs. 10,000/-
c) Special Diet	Rs. 5,000/-
d) Medical expenses	Rs. -
e) Pain and sufferings (fracture)	Rs. 17,500/-
f) Attendant charges	Rs. 5,000/-
g) Loss of income (2 x Rs.5000/-)	Rs. 10,000/-
h) Loss of amenity for whole body assessed as 8 x Rs.2,000/-)	Rs. 16,000/-

Total	Rs. 3,33,500/-

Challenging the said Award that it is exorbitant; the Insurance Company has come up in the present Appeal.

5.The Learned Counsel for the Appellant/Insurance Company would strenuously contend that the Tribunal erred in fixing the loss of earning capacity @ 25% for fracture in jaw and erroneously applied multiplier method and awarded a huge sum of Rs.2,70,000/- towards loss of earning capacity. Further, it is contended that the Claimant was not referred to the Medical Board for assessing the disability at 25% and at any event; the Award of the Tribunal is excessive and liable to be set aside.

6.On the other hand, the learned counsel for the 1st Respondent/Claimant would submit that considering the age of the Claimant, nature of work, nature of grievous injuries sustained by him, the Tribunal below has awarded a just and reasonable compensation and the Award does not require any interference from this Court.

7.I heard Mr.M.Krishnamoorthy, learned counsel for the Appellant/Insurance Company and Mr.R.Bharath Kumar, learned counsel for the 1st respondent/claimant and perused the pleadings of the respective parties and the materials available on record.

8.It is not in dispute that the subject vehicle is insured with the Appellant/Insurance Company. The Tribunal below, after carefully considering the oral and documentary evidences adduced in the case, rightly held that the accident occurred only due to the rash and negligent driving of the driver of the Bus. On perusal of Ex.P-3 and Ex.P-4, the copy of the Accident Register and Follow-up Card issued by the Government General Hospital, Pudhucherry, it is seen that the Claimant was immediately admitted for treatment, after the accident and the Claimant has sustained grievous injuries, just below on the right eye, laceration on the fore-head and injuries on the right wrist. It is also seen that PW-2, Doctor, who examined the Claimant, has assessed the percentage of disability at 25% finding that the movement of face of the Claimant is restricted with pain and the Claimant is not able to do any hard-work and the disability is a partial permanent one.

9.It is also seen that though the Claimant is said to be a Mason, no document any evidence was produced before the Tribunal for avocation. However, due to accident, the Claimant has to suffer in doing the normal and routine work by the injured hand, and to suffer due to disfigured face.

10.The Appellant/Insurance Company has not disproved the oral and documentary evidences, adduced by the Claimant, by examining any independent witnesses, as well as marking

documents on their side. However, instead of adopting multiplier method, it would be reasonable to grant a sum of Rs.3,000/-, per percentage of disability as assessed by PW-2, Doctor and compensation for disability would be Rs.3,000/- x 25 = Rs.75,000/-. Similarly, a sum of Rs.10,000/- would be reasonable, instead of Rs.5,000/-, towards extra nourishment; a sum of Rs.50,000/- would be reasonable towards pain and suffering due to fracture; a sum of Rs.10,000/- would be reasonable towards attendant charges; a sum of Rs.20,000/- would be reasonable towards loss of income and a sum of Rs.25,000/- would be reasonable towards loss of amenities. Though the Tribunal has not awarded any amount towards medical expenses, as the Claimant had taken treatment at the Government Hospital, he would have incurred some amount towards medical expenses and hence, a sum of Rs.10,000/- is added towards medical expenses. Considering the total circumstances, the Award of the Tribunal is modified as follows:-

Rs.3,000/- for each percentage of disability, the compensation for disability of 25% as assessed by PW2 would be Rs.3,000/- x 25% :	Rs. 75,000/-
Transport charges	: Rs. 10,000/-
Special Diet	: Rs. 10,000/-
Pain and suffering	: Rs. 50,000/-
Attendant charges	: Rs. 10,000/-
Loss of income for 6 months at Rs.5,000/- x 6 :	Rs. 30,000/-
Loss of amenities	: Rs. 25,000/-
Medical expenses	: Rs. 10,000/-

TOTAL	Rs. 2,20,000/-

11. In fine, this appeal is partly allowed and the quantum of compensation of a sum of Rs.3,33,500/- awarded by the Tribunal is modified and the 1st Respondent/Claimant is entitled to a sum of Rs. 2,20,000/- as compensation. The interest awarded by the Tribunal @ 7.5% p.a. from the date of filing of the Claim Petition, till the date of deposit is confirmed.

12. The Appellant/Insurance Company is directed to deposit

the entire amount awarded by the Court, less the amount already deposited, along with accrued interest to the credit of M.C.O.P.No.2596 of 2008 on the file of the Motor Accidents Claims Tribunal (II Additional Subordinate Judge), Cuddalore, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the 1st Respondent/Claimant is permitted to withdraw the amount. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Vs

To

The Motor Accidents Claims Tribunal
(II Additional Subordinate Judge), Cuddalore.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No. 22491
+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No. 23238

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C.M.A.No.556 of 2015

PA (CO)
GN(11/06/2019)

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