

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3437 of 2013

Murugesan

...Appellant/petitionert

vs.

1.Janarthanan

2.The Divisional Manager,
The United India Insurance Co. Ltd.,
No.46, Katpadi Salai,
Vellore.

...Respondents/Respondents

(R1-set exparte before the Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 21.12.2011 passed in MCOP.No.342 of 2005 on the file of the Motor Accident Claims Tribunal / Additional Subordinate Judge, Tiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Mr.D.Bhaskaran for R2
No appearance for R1

J U D G M E N T

The appellant is the claimant in MCOP.No.342 of 2005 on the file of the Motor Accident Claims Tribunal / Additional Subordinate Judge, Tiruvannamalai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.1,00,000/- for the injuries sustained by him in a road accident on 04.11.2004.

2. The case of the claimant is that on 04.11.2004, he was travelling in a bullock cart along Tiruvannamalai - Thandaramapattu road, near Samuthiram Village School and at about 05.30 pm, a speeding lorry bearing Registration No. TN 45 E 9922 belonging to the first respondent and insured with the second respondent hit the bullock cart, as a result of which, he fell down and sustained injuries all over his body.

3. According to the claimant, the rash and negligent driving of the driver of the lorry belonging to the first respondent was the cause of the accident and that since the said lorry was insured with United India Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

4. The owner of the lorry remained absent before the Tribunal and therefore he was set exparte. The second respondent / United India Insurance Company contested the claim petition on all the grounds available to the insured. The learned Additional Subordinate Judge / Motor Accident Claims Tribunal, Tiruvannamalai after analysing the evidence on record, awarded a compensation of Rs.84,200/- together with interest at the rate of 7.5% per annum to the claimant. Not being satisfied with the quantum of compensation awarded by the Tribunal, the National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Though several grounds were raised in the appeal, Mr.F.Terry Chellaraja, learned counsel appearing for the appellant restricted his arguments only with regard to "loss of income" awarded by the Tribunal. He also contended that the Tribunal did not award any amount for the injuries sustained by the pair of bullocks.

6. Per Contra, Mr.D.Bhaskaran, learned counsel appearing for the second respondent / United India Insurance Company contended that the Tribunal after considering all the aspects of the case, awarded a just compensation of Rs.84,200/- and the same need not be disturbed at this stage.

7. A perusal of the records shows that the claimant has sustained fracture of his left wrist and Dr.Raveendran (PW2) has assessed the partial permanent disability as 30%. The Tribunal considering the nature of injuries sustained by the claimant had awarded a sum of Rs.60,000/- towards partial permanent disability which in the opinion of this Court is just and reasonable. However, the Tribunal awarded only a sum of Rs.3,000/- towards "loss of income". On account of the accident, the claimant would not have been in a position to attend to his regular work atleast for 2 months and therefore, a sum of Rs.6,000/- (Rs.3,000/- x 2 months) is awarded towards "loss of income". All the other heads awarded by the Tribunal are just and reasonable and therefore, they are upheld.

8. Eventhough it is contended that the bullocks were injured

in the accident, no medical bills are adduced by the appellant / claimant and therefore the Tribunal was right in not awarding any amount for the alleged medical treatment of the pair of bullocks.

9. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.84,200/- to Rs.87,200/-.

(iii) The second respondent / United India Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.87,200/- (less the amount already deposited) 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 MCOP.No.342 of 2005 on the file of the Motor Accident Claims Tribunal / Additional Subordinate Judge, Tiruvannamalai within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1. The Additional Subordinate Judge,
The Motor Accidents Claims Tribunal,
Tiruvannamalai.

2.The Section Officer
VR Section,
High Court of Madras.

+1 cc to Mrs.M.Malar Advocate sr94358

+1 cc to Mr.D.Bhaskaran Advocate sr94425

CMA.No.3437 of 2013

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