

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3523 of 2011

and

M.P.No.1 of 2011

United India Insurance Co. Ltd.,
Divisional Manager,
7-A, West Veli Street, 2nd Floor,
Madurai.

...Appellant/2nd Respondent

Vs.

1. M.Bangaru1st Respondent/Petitioner

2. Tmt.Pappara Ayee2nd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act 1988, against the Judgment and Decree dated 05.04.2011 made in MCOP.No.691 of 2009 on the file of the MACT (CJM) at Dharmapuri.

For Appellant : Mr.T.Ravichandran

For R1 : Mr.M.Selvam

R2 - Disd vide Court Order
dated 02.09.2015

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 05.04.2011 made in MCOP.No.691 of 2009 on the file of the Chief Judicial Magistrate (Motor Accident Claims Tribunal), Dharmapuri.

2. The case of appellant is that on 07.10.2003 at about 05.00 a.m., while the first respondent was walking on the left side of the Madurai to Trichy Main Road from South to North direction near Karunkalakudi bus stop, Melur Taluk, Madurai District, a vehicle Elcot Crane bearing Reg. No. TN-59-W-1498 which came from the same direction in a rash and negligent manner hit against him and crushed his right leg foot by the front wheel. Due to this accident, he sustained severe injury on

the right leg foot and other injuries on all over the body. Immediately he was taken to Chenthil Nursing Home at Madurai and admitted as an inpatient, and during the treatment he had undergone surgery on 07.10.2003 and later he was discharged on 01.01.2004. Thereafter, he had further taken treatment at Dharmapuri Local Hospital and also in a Private Hospital, but in-spite of continuous treatment, he became permanently disabled.

3. He was aged about 45 years at the time of accident, and before the accident, he was doing Coolie work and was earning Rs.200/- per day. Now due to the permanently disability, he suffers from Loss of Income. Hence, he filed a petition before the Chief Judicial Magistrate (Motor Accident Claims Tribunal), Dharmapuri, claiming Rs.5,00,000/- as compensation against the second respondent and the appellant as they are the owner and insurer of the vehicle involved in the accident.

4. Denying the allegations, the appellant filed a counter affidavit stating that the first respondent has to strictly prove with documentary evidence that the vehicle involved in the accident was insured with the appellant on the date of accident and also the driver of the vehicle was having valid driving licence at the time of accident. Further, it has been stated that the alleged age, occupation and income of the first respondent are not correct and the amount of compensation claimed is also very high.

5. The Chief Judicial Magistrate (Motor Accident Claims Tribunal), Dharmapuri, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the first respondent and awarded Rs.2,08,000/- as compensation to the first respondent as given below :

Loss of Income (3000 x 12:	36,000
Extra Nourishment :	5,000
Transport Expenses :	2,000
Pain & Sufferings :	70,000
Permanent Disability (35 x 2000) :	70,000
Amenities :	25,000
Total	2,08,000

6. Aggrieved by the award, the appellant has filed this appeal before this Court stating that when the doctor assessed only 35% disability, the Tribunal ought not to have awarded Rs.70,000/- under the head of Pain & Sufferings. Further, the sum of Rs.36,000/- awarded for Loss of Income and the sum of

Rs.25,000/- awarded for Amenities are unsustainable and the same needs interference of this Court.

7. Heard the learned counsel for the appellant and the learned counsel for the respondents, and perused the materials available on record.

8. On perusal of the award dated 05.04.2011 passed by the Chief Judicial Magistrate (Motor Accident Claims Tribunal), Dharmapuri, it is observed that the first respondent in order to prove that the second respondent's driver is the cause of accident marked FIR as Ex.P1. The appellant and the second respondent have not placed any material against the said document, and therefore, the Tribunal based on the FIR report has come to the conclusion that the second respondent's driver is the cause of alleged accident. Further, it is observed that the first respondent in order to prove the disability marked Disability Certificate and X-Ray as Exs.P5 & P6 and also one Dr.Krishnakumar examined on the side of him as PW2 and deposed that when he examined the first respondent on 20.12.2010, he found that the first respondent's right leg's Tibia had been broken in the accident and due to which, he underwent surgery in Chenthil Nursing Home at Madurai. Further, he found that the first respondent was troubled to sit, stand and walk for long time and thus he sustained 45% permanent disability. The Tribunal only after considering the same has fixed the permanent disability as 45% and awarded Rs.70,000/- i.e. Rs.2,000/- per percentage under the said head and hence the same cannot be modified.

9. It is also observed that the first respondent has not placed any material to prove that he was working as Coolie and was earning Rs.6,000/- per month before the accident, and therefore, the Tribunal has fixed only 3,000/- as his income and awarded Rs.36,000/- i.e. 3000×12 under the head of Loss of Income and the same cannot be reduced further. Moreover, it is observed that since the first respondent had undergone surgery on his right leg's Tibia, definitely he would have suffered from severe pain after the surgery, and only considering the same, the Tribunal has awarded a huge sum i.e. Rs.70,000/- under the head of Pain & Sufferings and hence the same cannot be reduced. Furthermore, the sums awarded under all other heads i.e. Rs.5,000/- for Extra Nourishment, Rs.2,000/- for Transport and Rs.25,000/- for Amenities are all carefully considered and reasonably awarded by the Tribunal and hence the same cannot be modified.

10. In view of the observations made by this Court, this Court does not find any error in the award passed by the Chief Judicial Magistrate (Motor Accident Claims Tribunal), Dharmapuri

in MCOP.No.691 of 2009 and hence this Court is inclined to confirm the same.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed and the appellant insurance company is directed to deposit the entire award amount as fixed by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent/claimant is permitted to withdraw the amount, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

raja
To

1.The Chief Judicial Magistrate
(Motor Accident Claims Tribunal), Dharmapuri.

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

+1 CC to Mr.M.Selvam, Advocate sr 101857

+1 Cc to Mr.T.Ravichandran, Advocate sr 102171.

C.M.A.No.3523 of 2011
and

M.P.No.1 of 2011

BP(CO)
SP(22/04/2021)

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