

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1333 of 2018

and

C.M.P.No.10732 of 2018

M/s.Reliance General Insurance Co. Ltd.,
B.S.A. Kalugu Towers, 2nd Floor,
15A, Thillai Nagar, Trichy - 18. Appellant /R2

Vs.

1. Raja ... R1/Petitioner

2. M/s.P.S.K. Infrastructure & Products Ltd.,
9th Ward, 3rd Cross Street, 4th Road,
Avvaiyar Street, Duraimangalam,
Perambalur District - 621 212.R2/R1

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the award and decree dated 11.12.2017 made in M.C.O.P.No.1059 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.H.Manojin

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 11.12.2017 made in M.C.O.P.No.1059 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem.

2. The case of the appellant is that on 14.04.2016 at about 09.30 a.m., the first respondent, namely, Raja, and his wife were travelling by a two wheeler (TVS XL Super) bearing Registration No.TN-28-AS-3087 on Mettala to Attur Main Road on the left side of the road. At that time, a Tipper Lorry bearing Registration No.TN-67-F-5592 driven by the driver of the second respondent, hit against the first respondent's vehicle. As a result, the first respondent fell down and the back wheel of the lorry ran over the right leg of the first respondent. Immediately, he was taken to the Government hospital, Rasipuram, and after first aid, he was shifted to

Ganga Hospital, Coimbatore. At the time of treatment, his right leg below knee was amputated since it was completely crushed, and due to which, he had become permanently disabled. Since the accident occurred only due to the negligent driving of the second respondent's driver, he filed a Claim Petition before the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem, claiming a sum of Rs.25,00,000/- as compensation under various heads.

3. Denying the mode of accident, the appellant insurance company has contended that the accident occurred only due to the negligence of the claimant and there is no negligence on the part of the second respondent's driver. Further, there is no document filed to prove the age, occupation and income of the claimant and therefore, they are not liable to pay any compensation to him.

4. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the first respondent/claimant and awarded a sum of Rs.11,54,204/- as compensation under the following heads:

S.No.	Particulars	Amount in Rs.
1.	Loss of Income (10,000 x 12 x 11 x - 65/100)	8,58,000/-
2.	Pain and Sufferings	50,000/-
3.	Transport and other charges	10,000/-
4.	Medical Expenses	1,11,204/-
5.	Extra Nourishment	25,000/-
6.	Loss of Amenities	1,00,000/-
	Total	11,54,204/-

5. Aggrieved by the award, the first respondent/claimant has preferred this appeal before this Court by submitting that in the absence of any documentary evidence to prove the avocation of the claimant, the Tribunal has fixed the monthly income as Rs.10,000/- by assumption. Further, the Tribunal has erred in fixing the percentage of the disability and awarding sum under the heads of Pain and Sufferings, Extra Nourishment and Loss of Amenities.

6. Heard the learned counsel on either side and perused the materials available on record.

7. On perusal of the award dated 11.12.2017 passed in M.C.O.P.No.1059 of 2016 by the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem, it is observed that though it was not denied by the appellant insurance company that before the accident, the first respondent/claimant was supplying Milk and was earning a sum, the first respondent/claimant has not filed any document to prove the same. While being so, the sum of Rs.10,000/- fixed as month income of the claimant is highly excessive. Hence, it is hereby modified as Rs.9,000/- per month. Further, the sum of Rs.1,00,000/- awarded under the head of Loss of Amenities is also found excessive, hence, it is also hereby modified as Rs.50,000/-. The remaining sums awarded under the other heads i.e. Rs.50,000/- for Pain and Sufferings, Rs.10,000/- for Transport and other charges, Rs.1,11,204/- for Medical Expenses and Rs.25,000 for Extra Nourishment, are all reasonably considered by the Tribunal, therefore, they need not be any interference of this Court. Thus, the compensation awarded by the Tribunal is modified in the following manner :-

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or reduced
1.	Loss of Income (9,000x12x11x65/100)	8,58,000/-	7,72,200/-	Reduced
2.	Pain and Sufferings	50,000/-	50,000/-	Confirmed
3.	Transport and other charges	10,000/-	10,000/-	Confirmed
4.	Medical Expenses	1,11,204/-	1,11,204/-	Confirmed
5.	Extra Nourishment	25,000/-	25,000/-	Confirmed
6.	Loss of Amenities	1,00,000/-	50,000/-	Reduced
	Total	11,54,204	10,18,404/-	Reduced by 1,35,800/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,54,204/- is hereby reduced to Rs.10,18,404/-. The appellant insurance company is directed to deposit the said amount with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, 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 along with interest and cost, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

9. The appellant insurance company would submit that they have already deposited the entire award amount to the credit of M.C.O.P.No.1059 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem, hence, they seeks permission of this Court to withdraw the excess amount deposited by them.

10. In view of the submissions made by the learned counsel for the appellant insurance company, the permission is granted to withdraw the excess amount deposited by them.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Raja

To

The Special Subordinate Judge No.I,
Special Subordinate Court No.1
(Motor Accident Claims Tribunal),
Salem.

Copy To

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 73365

+1cc to Mr.H.Manojin, Advocate, S.R.No. 73744

C.M.A.No.1333 of 2018
and
C.M.P.No.10732 of 2018

EV(CO)
GN(21/10/2020)