

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:09.09.2019
CORAM
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.440 of 2018
&
CMP.No.3829 of 2018

M/s. United India Insurance Company Limited,
Motor Third Party Hub,
Sillingi Buildings, IV Floor,
No.134, Greams Road,
Chennai - 600 006.

... Appellant/II Respondent

vs.

1.Mohan Lal Nichani
2.K.S.Asghar Ahmed

...Ist Respondent /Petitioner
and Respondents/Ist Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 27th October, 2017 passed in MCOP.No.2360 of 2011 by the Motor Accident Claims Tribunal (In the Court of Special Sub.Judge-I for MCOP Cases - Small Causes Court) at Chennai.

For Appellant : Mr.J.Michael Visuvasam

For Respondent 1 : Mr.K.Suryanarayana

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

The instant appeal has been filed by the Insurance Company challenging the award dated 27.10.2017 passed by the Motor Accident Claims Tribunal (In the Court of Special Sub.Judge-I for MCOP Cases - Small Causes Court) at Chennai in MCOP.No.2360 of 2011.

Brief facts leading to the filing of the instant appeal:

2. The first respondent sustained injuries as a result of an accident that took place on 26.05.2010 caused by an Auto Rickshaw bearing registration No.TN07-Y-6039 owned by the second respondent and insured with the Appellant. The accident happened while the first respondent was walking on the Poonamallee Highway near A.K.Nursing Home, Aminjikarai.

3. The first respondent preferred a claim before the Motor Accident Claims Tribunal (In the Court of Special Sub.Judge-I for MCOP Cases - Small Causes Court) at Chennai in MCOP.No.2360 of 2011 seeking a compensation of Rs.50,00,000/- for the injuries sustained by him as a result of the accident caused by the Auto Rickshaw.

4. The Motor Accident Claims Tribunal by its award dated 27.10.2017 directed the Appellant to pay the first respondent a sum of Rs.52,08,800/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation for the injuries sustained by him as a result of the accident.

5. Aggrieved by the award dated 27.10.2017 passed by the Motor Accident Claims Tribunal in MCOP.No.2360 of 2011, the instant appeal has been filed by the Insurance Company.

6. Heard Mr.Michael Visuvasam, learned counsel for the Appellant and Mr.K.Suryanarayana, learned counsel for the first respondent.

Discussion:

7. The Appellant has challenged the finding of the Tribunal that the insured vehicle was the cause of the accident. They have also challenged the quantum of compensation assessed by the Tribunal. However, it is the categorical stand of the first respondent/claimant that only due to the rash and negligent driving by the driver of the Auto Rickshaw (insured vehicle), the accident had happened.

8. This court has perused and examined the impugned award as well as the evidence and materials available on record.

9. Before the Tribunal, the first respondent/claimant has filed 18 documents which were marked as Ex.P1 to Ex.P18 and two witnesses were examined on his side and the witnesses were PW1, the first respondent himself and PW2, his wife. The Medical Board had also examined the first respondent at the request of the Tribunal and the disability certificate issued by the Medical Board was marked as Ex.C1. Neither any witness nor documents were produced by the Appellant before the Tribunal.

10. FIR was initially registered against an unknown car by the police, based on the complaint given by the first respondent's/claimant's wife. The first respondent's wife (PW2) has deposed before the Tribunal that only through phone, she was informed by the driver of the Auto Rickshaw that an unknown

vehicle was involved in the accident which resulted in the injuries to her husband, the first respondent herein. After the first respondent was hit by the Auto Rickshaw, he became unconscious which is an undisputed fact. The first respondent's wife (PW2) has also clarified that subsequently after investigation by the police, it was found that the driver of the Auto Rickshaw (insured vehicle), due to his rash and negligent driving had in fact caused the accident which resulted in the injuries sustained by her husband. The first respondent/claimant has also deposed before the Tribunal and clarified that it was only the Auto Rickshaw (insured vehicle) which hit against him causing grievous injuries to him. The Charge Sheet (Ex.P16) has also been filed by the police only against the Auto Rickshaw driver Ismail under section 203, 388 of IPC and under Section 184 and 134 (b) r/w section 187 of the Motor Vehicles Act on the file of the learned VIth Metropolitan Magistrate, Egmore. Ex.P15 is the statement given by Auto Rickshaw driver to the Traffic Investigation Police, Anna Nagar which reveals that he was responsible for the accident and he has also paid a fine of Rs.2,200/- for his rash and negligent driving of the Auto Rickshaw. The oral evidence of PW1 and PW2 and the documentary evidence exhibits P15, P16 and P17 will conclusively indicate that only due to the rash and negligent driving by the driver of the Auto Rickshaw, the accident had happened which caused grievous injuries to the first respondent/claimant.

11. However, the first respondent ought to have been cautious and alert while walking on the road. The Auto Rickshaw (insured vehicle) has admittedly hit the first respondent/claimant from behind. This being the case, it can be inferred that the first respondent/claimant was not walking in the platform but walking on the road. He has also not followed the pedestrian rules. Therefore, there is some amount of contributory negligence on the part of the first respondent/claimant also. However, the Tribunal has entirely fixed the negligence on the driver of the Auto Rickshaw. We are of the considered view that 20% contributory negligence must be fixed on the first respondent/claimant who was a pedestrian. Therefore, the finding of the Tribunal that the entire negligence was on the part of the driver of the Auto Rickshaw has to be set aside and instead 80% contributory negligence on the part of the driver of the Auto Rickshaw and 20% contributory negligence on the part of the first respondent/claimant is the correct assessment of negligence between the two parties.

12. As a result of the accident, the first respondent/claimant has sustained the injuries viz., Acute Subdural Hemorrhage in right fronto Temporal Region, Hemorrhagic

Contusion in right frontal and right temporal regions, Fractures of lateral border of left scapula and left 2nd and 5th Ribs, Diabetes Mellitus, Acute renal failure, soft tissue injury, Aspiration Pneumonia, Pulmonary Tuberculosis, Diabetes Mellitus Right Fronto Parietal Autologous Cranioplasty, Open reduction and internal fixation- radial nerve release on the right arm, Traumatic brain injury Sequelae (spasticity) Diabetes Mellitus and Seizure disorder.

13. The discharge summary issued by the Apollo hospital, Trauma and Orthopaedic Specialty Hospital and Brain and Spine Hospital were marked as Ex.P1 to Ex.P6 before the Tribunal. The discharge summary issued by the hospitals reveals that the first respondent was admitted as inpatient from 26.05.2010 to 23.07.2010, from 26.07.2010 to 18.08.2010, from 25.05.2011 to 29.05.2011, from 14.02.2012 to 17.02.2012, from 01.08.2012 to 05.08.2012 and from 17.11.2012 to 28.11.2012 in six spells and four surgeries were done on the first respondent. Ex.P8 is the OP note issued by JK Bone and Spine Physiotherapy clinic and it reveals that the first respondent has continued with his physiotherapy treatment for 40 days on alternate days. Ex.P10 is the OP note issued by Neuro Rehabilitation and it shows that the first respondent has continued with his treatment as an out patient for more than 25 days. Ex.P14 is the wound certificate issued by the Apollo Speciality Hospital and it shows that the injuries are grievous in nature. Ex.C1 is the disability certificate issued by the Medical Board, Rajiv Gandhi General Hospital and it reveals that the disability of the first respondent caused by the accident is 75%. The Tribunal has rightly accepted the disability certificate Ex.C1 issued by the Medical Board, Rajiv Gandhi General Hospital, as it is an independent report.

14. The first respondent/claimant is a financier and he claimed that he was earning a monthly income of Rs.50,000/- at the time of the accident. But, however, as per Ex.P12, Indian Income Tax Return Verification Form, it shows his annual income for the assessment year 2009-2010 was only a sum of Rs.4,05,775/-. Based on his annual gross income as per Indian Income Tax Return Verification Form for the assessment year 2009-2010, the Tribunal has rightly assessed the monthly income of the first respondent at the time of the accident as Rs.33,184/-

15. The age of the first respondent/claimant is 58 years at the time of the accident which is also disclosed in the medical records. Considering the nature of injuries which are grievous in nature and has restricted the free movement of the

first respondent/claimant, the Tribunal has rightly applied the multiplier method in assessing the compensation.

16. The first respondent/claimant, being a financier will have to move from one place to another for recovery of lent money and due to the grievous injuries sustained by him as a result of an accident, his movement would have been drastically restricted. The Tribunal has applied the right multiplier of 8 as per the II schedule of Motor Vehicles Act, considering the age of the first respondent/claimant, at the time of the accident.

17. The Tribunal has awarded the total compensation of Rs.52,08,800 to the first respondent in the following manner:

Heads	Amount (Rs.)
Pecuniary loss	23,89,248/-
Pain and suffering	2,00,000/-
Transportation	20,000/-
Extra Nourishment	1,00,000/-
Attender Charges	26,750/-
Medical expenses	20,73,700/-
Loss of earnings	1,99,104/-
Loss of future prospects	2,00,000/-
Total	52,08,802/-
Rounded off	52,08,800/-

18. Considering his nature of business and injuries sustained by him, we are of the considered view that the assessment of the compensation by the Tribunal under the impugned award is a just compensation.

19. Excepting for wrong assessment of proportionate negligence between the driver of the Auto Rickshaw and the first respondent/claimant, we do not find any infirmity in other aspects of the impugned award. For the foregoing reasons, we fix the contributory negligence of the driver of the Auto Rickshaw at 80% and the first respondent/claimant at 20% and therefore, proportionately the compensation assessed by the Tribunal in favour of the first respondent has to be reduced by 20%.

Conclusion:

20. In the result, the appeal is partly allowed and the rate of interest awarded by the Tribunal at the rate of 7.5% per

annum is confirmed. The Appellant is directed to deposit 80% of the impugned award amount i.e., Rs.41,67,040/- before the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.2360 of 2011 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount to the first respondent/claimant through RTGS within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1.The Motor Accident Claims Tribunal
The Court of Special Sub.Judge-I
for MCOP Cases - Small Causes Court)
Chennai.

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

+1 cc to M/s.J.Michael Visuvasam Advocate sr 77687
+1 cc to Mr.K.Suryanarayanan Advocat Advocate sr77874

C.M.A.No.440 of 2018

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