

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.07.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2003 of 2008 and
M.P.1 of 2008

The Divisional Manager
United India Insurance Company Ltd
7-A. Varadhanar Street
Vedachalam Nagar
Chengalpattu - 1

Appellant / 2nd Respondent

Vs

1. Ranjit Kumar

2. Alagesan

1st Respondents / 1st Respondent
2nd respondent / Claimant

Prayer: Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 23.03.2005 made in MCOP No.153 of 2002 on the file of the Motor Accidents Claims Tribunal/Subordinate Court, Madurantakam.

For Appellant : Mr.C.R.Krishnamoorthy
For R1 : No appearance
For R2 : Mr.K.Govi Ganesan

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the appellant/Insurance Company against the award passed in MCOP No.153 of 2002.

2. In respect of an accident that took place on 09.05.2001, the 2nd respondent herein has sustained severe injuries. It was the case of the claimant before the Tribunal that while he was a pillion rider in a Motor cycle bearing Reg.No.TN 21 Y 4579, he met with an accident and sustained severe injuries. He was aged about 30 and he was an agriculturist as well as contractor at the time of accident. So contending, he filed a Claim Petition, claiming a compensation of Rs.5,00,000/-. The Tribunal has awarded a sum of Rs.4,00,000/- as total compensation.

3. Aggrieved over the same, this Civil Miscellaneous appeal has been preferred by the appellant Insurance Company.

4. Heard the learned counsel for the appellant and the learned counsel for the second respondent/claimant.

5. Despite service of notice, there is no representation for the first respondent.

6. The learned counsel for the appellant submitted that the Tribunal in the absence of any proper eyewitness, ought not to have come to the conclusion that the accident was due to the negligence on the part of the rider of the Motorcycle. He further submitted that the burden of proof lies on the side of the claimant and hence contributory negligence alone will rise in this case. That apart, the interest awarded by the Tribunal at the rate of 9% per annum is on the higher side. He further submitted that the award passed by the Tribunal needs significant reduction.

7. The Tribunal has rendered its findings on the following parameters:-

- ◆ Due to the accident, the claimant has suffered severe head injuries on his head and fracture on his right leg.
- ◆ He took treatment at Apollo Hospital from 09.05.2001 to 20.05.2001 as inpatient.
- ◆ A surgery was performed on his right leg by way of implant.
- ◆ He produced medical bills to the tune of Rs.1,12,787/-
- ◆ Ex.P.19 Disability Certificate reveals that he sustained 45% disability and in order to remove the plates fixed on his right leg, sums of Rs.25,000 to Rs.40,000/- required towards future medical expenses.

Based on the above aspects and taking into consideration Ex.P.1 First Information Report and Ex.P.18 Copy of receipt for payment of fine by the rider of the offending two wheeler, the Tribunal has fastened the liability on the rider of the two wheeler, which is payable by the Insurance Company and based on Exs.P.2 to 17 and Exs.19 to 21 and PW 2 Dr.Kannan Isac, the Tribunal has arrived at the quantum of Rs.4,00,000/- under the heads of medical Expenses and disability. There are ample evidence and documents available on record to arrive at such a conclusion. Hence, this Court is of the considered view that the negligence as well as quantum does not require any interference by this Court. Further to add, there are no evidence or documents produced by the Insurance Company to rebut the evidence of Pws 1 and 2 and Exs.P1 to 21. Further, the Tribunal has awarded rate of interest at the rate of 9% per annum from the date of petition till the date of deposit. It is to be noted that the accident had happened in the year 2001. In view of the settled position of law and the rules of the Motor Vehicles Act 1988, the rate of interest at 9% awarded by the Tribunal is reduced to 7.5% per annum.

8. In the result, this Civil Miscellaneous Appeal is partly allowed by reducing the rate of interest from 9% to

7.5% per annum. No costs. Consequently, the connected miscellaneous petition is closed. The compensation awarded by the Tribunal is hereby confirmed and the same is payable with interest at the rate of 7.5% by the Insurance Company/appellant herein, from the date of petition till the date of deposit. The appellant/Insurance Company shall deposit the compensation amount, along with 7.5% interest and costs, 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 Tribunal is directed to transfer the amount to the Savings Bank Account of the claimant /2nd respondent herein, through RTGS, within one week thereafter.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

srk/vrn
To

1.The Subordinate Judge,
Motor Accident Claims Tribunal
Madurantakam.

+1cc to Mr.C.R.Krishnamoorthy , Advocate SR.No. 64459
+1cc to Mr.K.Govi Ganesan , Advocate SR.No. 64858

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A.SK(18/03/2020)

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