

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

C.M.A.No.2950 of 2004
and
C.M.P.No.16659 of 2004

The New India Assurance Co. Ltd.
Rep. by its Branch Manager, T.S.No.1817,
Neela South Street,
Nagapattinam Town & Munsif Appellant/2nd Respondent

Vs.

1. Shanmugasundaram Respondent/Petitioner

2. Kuria Rose Mani 2nd Respondent/1st respondent

[R2 remained exparte in the lower Court and
notice to him is dispensed with]

Prayer : Appeal filed under Section 173 of the Motor Vehicles
Act, 1988, against the judgment and decree dated 11.06.2004 in
M.C.O.P.No.179 of 2003 on the file of the Motor Accident
Claims Tribunal (Additional Subordinate Judge), Nagapattinam.

For Appellant : Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the
appellant Insurance Company against the award dated
11.06.2004, passed by the Motor Accident Claims Tribunal
(Additional Subordinate Judge), Nagapattinam (hereinafter
referred to as 'the Tribunal'), in M.C.O.P.No.179 of 2003.

2.The brief facts of the case would run thus :

On 25.11.2002, at about 06.30 hours, when the
claimant/1st respondent was riding his bicycle in the
Karthanathapuram Main Road, observing traffic rules, the
motorcycle bearing Registration No.TN-50-B-4852, came from
behind in a rash and negligent manner and dashed against the
bicycle, due to which, the 1st respondent sustained grievous
injuries. Immediately, he was taken to the Thanjavur
Vinodhagan Memorial Hospital, where, he was treated as in-
patient. Later, he filed a claim petition, seeking a total
compensation of Rs.3,00,000/- before the Tribunal. On
consideration of the materials and evidence available on

record, the Tribunal awarded a sum of Rs.1,23,000/- as compensation in toto, with interest @ 9% from the date of claim petition.

3.Questioning the quantum of compensation, the appellant Insurance Company is before this Court, by way of this appeal.

4.Learned counsel for the appellant Insurance Company submitted that the Tribunal has erred in assuming the percentage of disability of the injured as 15%, which is untenable, and in any event, the amount awarded by the Tribunal towards such disability is exorbitant and excessive. Hence, the learned counsel contended that the award requires interference by this Court.

5.Heard the learned counsel appearing for the appellant Insurance Company and perused the entire materials available on record.

6.The appeal was admitted on 13.10.2004, however, it is seen that the appellant has not taken steps to serve notice on the 1st respondent/claimant, till now.

7.The Tribunal, on considering the oral and documentary evidence available on record, has found that the accident had occurred solely due to the negligence on the part of the rider of the motorcycle. This Court is not inclined to interfere with the said finding.

8.Dr.Rajagopal (P.W.2), in his evidence, has stated that, the 1st respondent sustained permanent disability of 54%, due to malunion of bones of the left hand. Ex.P8 is the disability certificate issued to that effect. The Doctor has further deposed that, he assessed the disability of the injured based on the wound certificate (Ex.P2) and case-sheet pertaining to the 1st respondent, but, the case-sheet was not marked before the Tribunal. Nevertheless, the fact remains that, due to the fractures sustained by the 1st respondent, there would be a significant decrease in his working efficiency. Even though the Doctor assessed the disability at 54%, the Tribunal has fixed the disability percentage at 15% and awarded a sum of Rs.15,000/- towards pain and suffering and medical expenses. Hence, this Court is not inclined to interfere with the same. Since, no documentary evidence was produced to show the income of the 1st respondent, who was working as a Head-Constable, the Tribunal fixed his annual income at Rs.4,000/- and awarded a sum of Rs.1,08,000/- towards loss of future income due to disability, which, in the opinion of this Court, is fair, just and reasonable and hence, the same is hereby confirmed.

9.In the result, this Civil Miscellaneous Appeal is dismissed, confirming the judgment and decree dated

11.06.2004, passed by the Tribunal, in M.C.O.P.No.179 of 2003. No costs. Consequently, connected Miscellaneous Petition is closed.

10.The appellant Insurance Company is directed to deposit the award amount, as ordered by the Tribunal, with interest and costs, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
(Additional Subordinate Judge),
Nagapattinam.

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

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No. 62886

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RSV(CO)
GN(16/03/2020)

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