

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1627 of 2013

The Branch Manager
The Oriental Insurance Co. Ltd.
Branch Office, No.281, Cross Cut Road,
Gandhipuram, Coimbatore 641 012. ..Appellant

Versus

1. Periyasamy, S/o. Angamuthu

2.Sundar Kumar, S/o. Rajagopal

(The 2nd respondent was set ex-parte before the
Tribunal) ..Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of
MV Act against the order and decree dated 23.12.2011 made in
M.C.O.P.No.17 of 2008 on the file of the Motor Accident Claims
Tribunal, (Principal Subordinate Judge), at Krishnagiri.

For Appellant : Mr.M. Krishnamoorthy

For Respondent-1 : Mr.M. Sriram

R2 - Exparte

J U D G M E N T

The Insurance Company has filed this appeal against the
award and decree made in M.C.O.P. No.17 of 2008 dated
23.12.2011 on the file of the Motor Accident Claims Tribunal,
(Principal Sub-ordinate Judge), at Kirshnagiri, in and by
which the 1st respondent herein was awarded a sum of
Rs.8,12,400/-by the Tribunal for the injury sustained by him.

2.The Insurance Company/appellant herein who is the
insurer of the offending vehicle, was the 2nd respondent, the
1st respondent who is injured in the road accident, was the
petitioner, and the 2nd respondent herein who is owner of the
vehicle, was the 2nd respondent before the Tribunal. For the
convenience, the parties are referred to in the same ranking
as before the Tribunal.

On 21.02.2005, while the petitioner was traveling on the back side of the vehicle, as a load man in the Minidor Goods Auto bearing Registration No.TN 63 C 2954, near Hindustan College Diversion Road, at S.N.R. Junction in Coimbatore to Avinasi Main Road, the driver of the said tempo drove the Minidor Goods Auto in a rash and negligent manner in the result of which the back door of the vehicle being opened after jolting on the road, the petitioner fell down from the vehicle and sustained grievous injuries all over the body. Thereafter, the petitioner was admitted in the Hospital and treated for the injury and was done surgery. Due to the injury in the accident, the appellant filed Claim petition in M.C.O.P. No.17 of 2008 on the file of the Motor Accident Claims Tribunal, (Principal Subordinate Judge), at Krishnagiri, wherein he was awarded a sum of Rs.8,12,400/- as compensation. Being aggrieved by the award, the Insurance Company has filed the present appeal questioning the quantum of the compensation awarded by the Tribunal.

4. The learned counsel for the appellant company would submit that the Tribunal has awarded a excessive award amount of Rs.8,12,400/- for the fracture of humerus and ulna in the left hand by applying multiplier method and contended that the amount awarded by the Tribunal towards monthly notional income of the petitioner and loss of earning capacity of the petitioner are excessive, exorbitant, without any basis and justification and that therefore, the award passed by the Tribunal is not accordance with the law and the same has to be set aside.

5. The learned counsel for the 1st respondent would submit that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the order of the Tribunal is in accordance with the law and the same has to be confirmed.

6. Heard the learned counsel on either side. On the side of the petitioner, P.W.1 and P.W.2 were examined and documents Ex.A1 to Ex.A15 were marked. On the side of the appellant-Insurance Company, neither witness was examined nor document was marked to support their claim.

7. The factum and manner of the accident being rash and negligent manner driving of the 1st respondent under Section 163-A is not in dispute. The quantum of the compensation is alone disputed by the Insurance Company-appellant herein.

8. On perusal of the record, it is seen that at the time of accident, the petitioner was aged 39 years working as a load-man in the offending vehicle bearing Registration No.TN63-C-2954. Ex.A1, FIR registered on the file of Traffic Investigation Wing Police, Coimbatore, in Crime No.72/05, on

02.03.2005, u/s.279 and 338 of I.P.C makes clear that the driver of the minidor drove the offending vehicle in a rash and negligent manner and caused to the accident. Ex.A8, Insurance Policy reveals the 2nd respondent owner of the vehicle has insured the offending vehicle with the appellant/Insurance Company. In the claim petition, the petitioner has claimed a sum of Rs.7,00,000/- as compensation for the injury sustained in the accident. However, the Tribunal has awarded a sum of Rs.8,12,400/- as compensation after considering the oral and documentary evidence. Inasmuch as loss of earning of the petitioner, who has worked as load-man in the offending vehicle, the income of the petitioner was not proved by the petitioner and any document was not produced before the Tribunal whereas the tribunal has fixed his notional income as Rs.3000/- is higher side. Hence, the loss of earning of the petitioner is fixed as Rs.2,500/-p.m. by adopting the same multiplier of 16. Accordingly, compensation towards loss of income of Rs.4,80,000/- is arrived (Rs.2500 X 12 X 16) instead of Rs.5,76,000/- (Rs.3000 X 12 X 16). Except the above, the compensation on other heads remains the same as fixed by the Tribunal.

9. In view of the above, the compensation awarded by the Tribunal is modified as per the details given below:

SL. No.	Particulars	Amount (in Rs.)
1	Permanent Disability @65%	1,30,000.00
2	Pain and Sufferings	50,000.00
3	Extra Nourishment	10,000.00
4	Loss of Income	4,80,000.00
5	Medical Bills	6,400.00
6	Transport Expenses	20,000.00
7	Attender Charges	20,000.00
Total Amount		7,16,400.00

Therefore, the petitioner is entitled to the modified compensation of Rs.7,16,400/- with interest @ 6% p.a. as against the compensation of Rs.8,12,400/- awarded by the Tribunal.

10.The appellant-Insurance company is hereby directed to deposit the modified award amount of Rs.7,16,400/- less the amount already deposited if any, with interest @ 6% p.a. from the date of petition within a period of three weeks from the date of receipt of copy of this order. The 1st respondent-petitioner is permitted to withdraw the modified award amount after adjusting the amount, if any, already withdrawn.

11. In the result, appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified in M.C.O.P. No.823 of 2006 dated 07.07.2010. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

lbm

To:

1.The Principal Subordinate Judge,
The Motor Accident Claims Tribunal,
Krishnagiri.

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

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No. 9661

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No. 9531

KS (CO)
GN(10/05/2021)

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