

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.09.2020
CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.388 of 2011

M.Mohan

...Appellant/ Petitioners

vs.

1.D.Kumudha

2.National Insurance Company Ltd.,
Rep. by its Divisional Manager,
No.1, Officers Line,
Vellore - 1.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 14.05.2010 in M.C.O.P.No.279/2007 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge (FTC), Vellore.

For Appellant : Mr.K.Raghuraman

For Respondents : R1 - Ex-parte in
Tribunal
Ms.N.B.Surekha for R2

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 14.05.2010 passed by the Motor Accidents Claims Tribunal, (Additional District and Sessions Judge (Fast Track Court), Vellore in MCOP No.279 of 2007.

2. The appellant / claimant sustained injuries on 06.02.2005 as a result of an accident caused by an auto rickshaw bearing Registration No.TN 04 D 5374, owned by the first respondent and insured with the second respondent. He preferred a claim before the Motor Accidents Claims Tribunal, (Additional District and Sessions Judge (Fast Track Court), Vellore in MCOP No.279 of 2007 seeking compensation of Rs.3,00,000/- for the injuries sustained by him.

3. The Motor Accidents Claims Tribunal, (Additional District and Sessions Judge (Fast Track Court), Vellore by its award dated 14.05.2010 directed the first respondent to pay the appellant / claimant a compensation of Rs.97,000/- together with interests and costs as detailed hereunder :-

Heads	Amount awarded by the Tribunal (Rs.)
Permanent disability	30,000/-
Pain and suffering	20,000/-
Loss of income	30,000/-
Nutritious Food	2,000/-
Transport	2,000
Attender charges	2,000
Shock and mental agony	2,000
Loss of amenities	2,000
Medical expenses	2,000
Future medical expenses	5,000
Total	97,000

4. The appellant /claimant has filed this appeal on the following two grounds :-

- a) The Tribunal ought not to have exonerated the liability of the Insurance Company and
- b) the Quantum of compensation awarded by the Tribunal is inadequate and is not a just compensation.

5. Heard Mr.K.Raghuraman, learned counsel for the appellant and Ms.N.B.Sureka, learned counsel for the second respondent. The first respondent has remained ex-parte both before the Tribunal and before this Court.

6. This Court has perused the materials and evidence available on record before the Tribunal.

7. Before the Tribunal, the appellant / claimant has filed 10 documents which were marked as Exs.P1 to Ex.P10 and two witnesses were examined on his side, viz., the appellant / claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the appellant / Insurance company neither any document was filed nor any witness examined before the Tribunal.

8. Insofar as the first contention raised by the appellant / claimant is concerned, it is now settled law that even in a case, where the driver / rider of the motor cycle /

vehicle was not possessing a driving licence at the time of the accident, the insurer is liable to compensate the claim and recover the same from the owner of the vehicle(insured). In the case on hand, admittedly the driver of the auto rickshaw(insured vehicle) was not possessing a driving licence at the time of the accident. However, the Tribunal erroneously has absolutely exonerated the second respondent / Insurance Company. Instead, the Tribunal ought to have directed the second respondent / Insurance Company to pay the compensation amount and recover the same from the owner of the vehicle (insured). In accordance with the settled law, this Court directs the second respondent / Insurance company to pay the compensation to the appellant / claimant and recover the same from the owner of the vehicle / first respondent by filing an execution petition before the same Tribunal.

9. Insofar as the second contention raised by the appellant / claimant viz., the quantum of compensation awarded by the Tribunal is inadequate and is not a just compensation is concerned, this Court is of the considered view that the compensation awarded by the Tribunal is a just compensation for the following reasons :

a) The accident is of the year 2005,
b) The Doctor has assessed the disability at 30% and the Tribunal has awarded Rs.30,000/- as disability compensation for the fracture injury with displacement of mid shaft of humerus in his left hand injury sustained by the appellant / claimant. Considering the nature of injuries sustained by the appellant / claimant, the disability compensation awarded by the Tribunal is a just compensation as the accident happened as early as in the year 2005. With regard to the compensation awarded by the Tribunal under other heads viz., Rs.20,000/- towards pain and sufferings, Rs.30,000/- towards loss of income; Rs.2,000/- each for Nutritious Food, Transport, Attender charges, shock and mental agony, loss of amenities and medical expenses and Rs.5,000/- towards future medical expenses are concerned they cannot be considered to be in adequate as alleged by the appellant.

11. For the foregoing reasons, the Civil Miscellaneous Appeal filed by the appellant / claimant stands partly allowed. No costs.

12. The second respondent / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.279/2007 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge (FTC), Vellore, within a period of four weeks from the date of receipt of a copy of this Judgment. It is made clear that the second respondent / Insurance company shall recover the same from the first respondent / owner of the vehicle. On such deposit being

made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant /claimant, through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

vsi2

To
1.The Additional District and Sessions Judge (FTC),
Motor Accident Claims Tribunal,
Vellore.

Copy to
The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to M/s.N.B.Surekha , Advocate SR.No. 30320
C.M.A.No.388 of 2011
A.SK(28.04.2021)



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