

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2532 of 2013

and

M.P.No.1 of 2013

The Branch Manager,
The New India Assurance co. Ltd.,
Kumaran Shopping complex,
Tiruppur, Policy No.450040666. Appellant/3rd Respondent

Vs.

1. N. Jayakumar1st Respondent/Petitioner
2. M. Ramesh2nd Respondent/1st Respondent
3.K.P. Vishnukumar3rd Respondent/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the above Judgment and Decree dated 29.06.2011 passed in M.C.O.P.No.1369 of 2008 on the file of V Additional District Fast Track Court and Motor Accidents Claims Tribunal, Coimbatore at Tiruppur.

For Appellant : Mr. J. Chandran

For Respondent-1 : Mr.Ma.Pa. Thangavel

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 29.06.2011 passed in M.C.O.P.No.1369 of 2008 on the file of V Additional District Fast Track Court and Motor Accidents Claims Tribunal, Coimbatore at Tiruppur

2.The appellant is the insurer of the alleged vehicle involved in the accident. The first respondent is the claimant. The second respondent and third respondents are the driver, owner of the vehicle respectively.

3.It is the case of the first respondent that on 19.10.2008 at about 17.30 hours when he was travelling in a car bearing Registration No.TN-39-AS-5006 towards Tirupur in the Kangayam to Tirupur Road, near Uthukuli Junction Road, the driver of the vehicle/second respondent suddenly lost his control over the vehicle and dashed against a tree. In the result the first respondent sustained injuries at right thigh fracture, femur

right fracture, right shoulder fracture, left leg and injuries all over the body. Hence, he filed a claim petition before the Tribunal claiming Rs.5,00,000/- as compensation. The Tribunal after analysing the oral and documentary evidence awarded Rs.3,61,480/- as compensation, with 7.5% interest from the date of petition till the date of deposit.

4.Challenging the award passed by the Tribunal the appellant has come up with this present appeal.

5.Before the Tribunal on the side of the appellant three witnesses was examined viz., P.W.1 to P.W.3 and marked five documents viz., Ex.P1 to Ex.P5. The respondents have not let in any documents or witness before the Tribunal.

6.The learned counsel for the appellant/Insurance Company denied the averments in the claim petition. He would further contend that there is no proof that due to the alleged accident the claimant has spent Rs.1,50,000/- towards medical expenses. He would further contend that the negligent on the part of the driver of the car was not proved. He also stated that the driver and the owner of the vehicle colluded with each other and foisted a false complaint. In any event the compensation amount is very high, when compared to the injuries sustained in the accident.

7.The learned counsel for the first respondent submitted that due to the injuries sustained in the accident he was not able to concentrate in his work as before and prays to enhance the compensation amount.

8.Heard the learned counsel appearing for the appellant and the first respondent and also perused the materials available on record.

9.With regard to negligence aspect P.W.1/ first respondent was examined and he deposed that negligent on the part of the driver of the car is the cause for the accident. Ex.P.1/F.I.R corroborates with the deposition of P.W.1. To controvert the same no new fact is forthcoming on the part of the respondents. Hence, the Tribunal concluded that the driver of the car is the cause for the accident. Hence, this Court is of the view that the finding of the Tribunal with regard to negligent aspect is based on the weightage of evidence, probabilities of case and settled principles of law and hence the same is confirmed.

10.With regard to quantum the Tribunal, based on Exs.P.2 to Ex.p.5 the Tribunal has awarded Rs.65,000/- and Rs.20,000/- as compensation towards Medical expenses and pain and sufferings. In the absence of any documentary evidence with regard to income

of the injured, considering the avocation of the injured the Tribunal fixed Rs.4,500/- as monthly income of the injured and quantified Rs.54,000/- as annual income. P.W.3/Dr. Senthil Kumar examined the injured and assessed disability at 34.9% but, considering the nature of injuries sustained by the victim only 32%(Rs.54,000 x 32/100 = Rs.17,280/-) is taken as disability and applied the multiplier '16' and awarded Rs.2,76,480/- (Rs.17,280 x 16 = Rs.2,76,480) as compensation towards Permanent Disability. Thus, quantified Rs.3,61,480/- as total compensation which is hereby tabulated:

Particulars	Amount
Permanent Disability	Rs.2,76,480/-
Pain and sufferings	Rs.20,000/-
Medical Expenses	Rs.65,000/-
Total	Rs.3,61,480/-

This Court is of the view that the finding of the Tribunal with regard to quantum is based on the weightage of evidence, probabilities of case and settled principles of law and hence the same is confirmed.

11. In view of the above, this Court do not find any error in the award dated 29.06.2011 passed by the Tribunal in M.C.O.P.No.1369 of 2008 and there is no merit in the appeal. Hence, this Court is not inclined to interfere with the same.

12. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest at the rate of 7.5% per annum, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant/first respondent is permitted to withdraw the compensation as awarded by the Tribunal along with interest and costs, less the amount, if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The V Additional District Fast Track Court
and Motor Accident Claims Tribunal
Coimbatore at Tiruppur

copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.Ma.Pa. Thangavel, Advocate sr 13669
+1 CC to Mr.J.Chandran, Advocate sr 13037.

C.M.A.No.2532 of 2013
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M.P.No.1 of 2013

AD(CO)
SP(10/11/2020)



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