

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2783 of 2013

and

M.P.No.1 of 2013

The Branch Manager,
M/s.New India Assurance Co. Ltd.,
First Floor, No.10/11, Church Road,
Dharapuram. ... Appellant/2nd Respondent

Vs.

1. Mr.R.Senthil Kumar ... Respondent/Petitioner
2. Mr.T.Muthusamy ... Respondents/1st Respondent
(2nd respondent exparte in Lower Court)

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 13.12.2012 made in M.C.O.P.No.901 of 2010 on the file of the Motor Accidents Claims Tribunal, First Additional District & Sessions Court, Tiruppur.

For Appellant : Mr.E.Rajadurai
For Mr.N.Vijayaraghavan

For R1 : Mr.MA.P.Thangavel
R2 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 13.12.2012 made in M.C.O.P.No.901 of 2010 on the file of the Motor Accidents Claims Tribunal, First Additional District & Sessions Court, Tiruppur.

2. The case of the appellant is that on 26.06.2010 at about 06.10 a.m., while the first respondent was going by bike bearing Registration No.TN-42-9465 from North to South on Dharapuram to Alangiyam Road in front of Elumalaian Chamber, a Lorry bearing Registration No.TAL-5589 driven by the driver of the second

respondent in a rash and negligent manner dashed against the first respondent's bike. As a result, the first respondent sustained grievous injuries and immediately he was admitted for treatment in Dharapuram Government Hospital. At the time of accident, he was aged 20 years, and before the accident, he was a barber and was earning Rs.8,000/- per month. Due to the injuries sustained in the accident, he became permanently disabled. Hence he filed a petition before the Motor Accidents Claims Tribunal, First Additional District & Sessions Court, Tiruppur, claiming Rs.5,00,000/- as compensation under various heads.

3. Denying the allegations, the appellant who is the insurer of the second respondent's lorry filed a counter affidavit before the Tribunal stating that the accident was occurred only due to the rash and negligent driving of the first respondent. Hence they are not liable to pay any compensation to him. Further, it has been stated that the driver of the second respondent had no valid driving licence at the time of accident and the first respondent has to strictly prove that the driver of the second respondent had possessed valid driving license at the time of accident. Moreover, it has been stated that the alleged disability, age, occupation and income of the first respondent are not true and the amount of compensation claimed is highly excessive.

4. During the trial, on the side of the appellant, one Easwaran was examined as RW1, one S.J.Balasubramaniam was examined as RW2 and Exs.R1 to R3 were marked. On the side of the first respondent, the first respondent was examined as PW1, one Vivekanandhan was examined as PW2, one Palanisami was examined as PW3, one Dr.Dhanasekar was examined as PW4 and Exs.P1 to P4 were marked.

5. The Motor Accidents Claims Tribunal, First Additional District & Sessions Court, Tiruppur, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the first respondent and awarded Rs.6,31,680/- as compensation as follows :

S.No.	Description	Amount
1.	Permanent Disability (6000 x 12 x 17 x 47%)	5,75,280
2.	Injuries	25,000
3.	Transportation	2,000
4.	Extra Nourishment	2,000
5.	Loss of Amenities	20,000

S.No.	Description	Amount
6.	Loss of Income	7,400
	Total	6,31,680

6. Aggrieved by the award, the appellant has filed this appeal before this Court stating that the Tribunal has erred in awarding the compensation at Rs.6,31,680/-.

7. Heard the learned counsel for the appellant and the learned counsel for the first respondent, and perused the materials available on record.

8. On perusal of the award dated 13.12.2012 passed by the Motor Accidents Claims Tribunal, First Additional District & Sessions Court, Tiruppur, it is observed that the first respondent in order to prove that the second respondent's driver was the cause for the alleged accident examined one eye witness, namely, Palanisami, as PW3, who has deposed that the accident was occurred only due to the rash and negligent driving of the second respondent's driver. On the other hand, the appellant has not placed any material or examined any witness to disprove the same. Therefore, the Tribunal has come to the conclusion that the second respondent's driver was the cause for the alleged accident. Further, it is observed that one Vivekanandhan examined as PW2 and deposed that the first respondent was a barber, he used to cut hair from him and the income of the first respondent was Rs.8,000/- per month. However, there was no any documentary evidence to prove the same. Therefore, the Tribunal considering that the first respondent would have earned Rs.200/- per day fixed the monthly income at Rs.6,000/-, which is a reasonable sum and not on the higher side.

9. It is also observed from the award of the Court below that the age of the first respondent was found to be 23 in Ex.P2 Discharge Summary and therefore the Tribunal has fixed the same as the age of the first respondent. The first respondent in order to prove the disability examined one doctor, namely, Dhanasekar. He has deposed that due to the accident, the first respondent had sustained lacerated injuries on his fingers. Thus he made a surgery. Still he suffered from severe pain and he was unable to do any work as before. Therefore he assessed 47% permanent disability. During the trial, the Tribunal also seen the injuries sustained by the first respondent in a photo taken from Ganga Hospital and only after seeing the same fixed the permanent disability at 47% and awarded Rs.5,75,280/- ($6,000 \times 12 \times 17 = 12,24,000 \times 47\%$) under the said head. Moreover, it is observed that due to the injuries, the first respondent had taken treatment as inpatient for 37 days. Therefore, the Tribunal has awarded Rs.25,000/- for Injuries and Rs.7,400/-

i.e. Rs.200/- per day for Loss of Income. During the period of treatment, the first respondent definitely would have spent some amount for Transportation and Extra Nourishment and would have suffered from Loss of Amenities. The Tribunal only considering the same has awarded Rs.20,000/- for Loss of Amenities and Rs.2,000/- each for Transportation and Extra Nourishment and this Court does not find it higher.

10. In view of observations made by this Court, this Court does not find any error in the award dated 13.12.2012 passed by the Tribunal and therefore not inclined to interfere with the same.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed and the appellant and the second respondent is directed to deposit the said amount of Rs.6,31,680/- jointly or severally with interest at the rate of 7.5% per annum from the date of petition till the date of realization, 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 first respondent/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

raja

To

1.The Motor Accidents Claims Tribunal, First Additional District & Sessions Court, Tiruppur.

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

+1 cc to Mr.N.Vijayaraghavan, Advocate Sr.No. 18317

+1 cc to Mr.Ma.P.Thangavel, Advocate Sr.No. 18059

C.M.A.No.2783 of 2013

and

M.P.No.1 of 2013

RLD(CO)

RMP(29/12/2020)