

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.3069 of 2013
and M.P. No. 1 of 2013

National Insurance Co. Ltd.,
58, Rajaji Salai,
Kangayam, Periyar,
Tamil Nadu,
Pin 638 701. Appellant/2nd Respondent

Vs.

1.Arunachalam1st Respondent/Claimant

2.S.K. Chinnasamy 2nd Respondent/1st Respondent
(R2 was set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.06.2011, made in M.C.O.P. No.327 of 2009, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Mr. S. Vadivel

For Respondent : Mr. M. Selvam (For R1)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 29.06.2011, made in M.C.O.P. No.327 of 2009, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant is the 2nd respondent in M.C.O.P. No.327 of 2009, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Krishnagiri. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.03.2008.

3. According to the 1st respondent, on the date of accident, at about 06.00 hours, when he was driving a Medium goods vehicle bearing Registration No. TN-30-F-7956 slowly and carefully, observing all the rules in the Authur to Cuddalore main road, the driver of the Heavy goods vehicle bearing Registration No. TN-27-H-8888 belonging to the 2nd respondent driving the same in the opposite direction, rash and negligently, swerved to the right without observing any rules and dashed against the vehicle driven by the 1st respondent and caused the accident. The accident occurred due to rash and negligent driving by the driver of the Heavy goods vehicle belonging to the 2nd respondent. In the accident, the 1st respondent sustained grievous injuries. The appellant as insurer of the vehicle belonging to the 2nd respondent and 2nd respondent as Owner of the offending vehicle are liable to pay compensation.

4. The 2nd respondent remained exparte before the Tribunal.

5. The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the accident occurred due to rash and negligent driving by the 1st respondent who drove the medium goods vehicle in the opposite direction. At the time of accident, the driver of the 2nd respondent was not possessing valid driving license and badge to drive the goods vehicle. However, the 1st respondent has to prove that the Heavy goods vehicle bearing Registration No. TN-27-H-8888 belonging to the 2nd respondent was insured with the appellant at the time of accident. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1 and examined one Dr.D.V.Gandhi, as P.W.2 and marked 7 documents as Exs.P1 to P7. The appellant did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the 2nd respondent vehicle and directed the appellant as insurer of the vehicle to pay a sum of Rs.4,27,000/- as compensation to the 1st respondent.

8. Challenging the quantum of compensation granted by the Tribunal in the award dated 29.06.2011, made in M.C.O.P. No.327 of 2009, the appellant-Insurance Company has come out with the present appeal.

9. Learned counsel appearing for the appellant-Insurance Company contended that the Tribunal ought not to have awarded compensation both under the heads of disability as well as loss of income. The Tribunal erred in awarding compensation by applying the multiplier method when the 1st respondent has not suffered any total and permanent disability. The 1st respondent has taken treatment only for a period of 16 days. He has not filed any follow up records to show the treatment taken by him subsequently. The 1st respondent has produced only the Driving License and has not produced any document to prove his avocation as Driver and monthly income. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10. The learned counsel appearing for the 1st respondent made his submissions in support of the award passed by the Tribunal.

11. Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the materials available on record.

12. It is the contention of the 1st respondent that he was working as a Driver of the Transport vehicles under the Management of VRL Logistics Limited, Hubli, Karnataka State and was earning a sum of Rs.10,000/- per month. Due to the injuries suffered by him, he could not continue his avocation as Lorry Driver and prayed for compensation. The 1st respondent as P.W.1, deposed about the nature of injuries and treatment taken by him. The 1st respondent examined P.W.2- Doctor who deposed about the nature of injuries and treatment given. P.W.2- Doctor certified that the 1st respondent suffered 60% disability and also deposed that the 1st respondent could not continue his job as Lorry Driver. The Tribunal considering the evidence of 1st respondent as P.W.1 and P.W.2 - Doctor and the nature of injuries and disability, held that the 1st respondent cannot continue his job as Driver and fixed his monthly income at Rs.4,000/- as the 1st respondent did not place any material before the Tribunal with regard to avocation and income. After fixing the monthly income at Rs.4,000/-, the Tribunal deducted Rs.2,000/- on the ground that the 1st respondent may earn Rs.2,000/- by doing other work and applying multiplier 13, granted a sum of Rs.3,12,000/- towards loss of earning power. The accident is of the year 2008 and Rs.6,500/- is normally fixed as notional income in the absence of any material evidence with regard to avocation and income. The 1st respondent was aged 48 years at the time of accident. By fixing Rs.6,500/- per month as notional income and applying multiplier 13, for 60% disability, the compensation towards loss of earning power would be Rs.6,08,400/-. In the

present case, the Tribunal has awarded a sum of Rs.90,000/- for disability and Rs.3,12,000/- for loss of loss of earning power, totaling to Rs.4,02,000/-. In view of the above amounts awarded by the Tribunal under the heads disability and loss of earning power, the total compensation awarded is not interfered with.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.4,27,000/- along with interest and costs is confirmed. The appellant is directed to deposit the award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.327 of 2009. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsa
To

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

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

+1cc to Mr.S.Vadivel, Advocate Sr.33033

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