

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3467 of 2013

New India Assurance Company Ltd.,
No.45, Moore street,
Chennai-600 001.

... Appellant/2nd Respondent

..Vs..

1. M.Dharmalingam ... Respondents/Claimants

2. K.Rajakumar ... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.07.2013 made in MCOP. No.3305 of 2011 on the file of the Motor Accident Claims Tribunal, (Court of Small Causes -V) Chennai.

For Appellant : Mr.J.Chandran
For Respondents : Mr.C.Ramasamy - R1 - No appearance
(R2 - Vacated)
R2-Exparte before the Tribunal

JUDGMENT

(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the impugned award dated 06.07.2013 passed by the Motor Accident Claims Tribunal (V - Small Causes Court), Chennai in MCOP.No.3305 of 2011.

2. The appellant/Insurance company has primarily challenged the impugned award on the ground that the quantum of compensation awarded by the Tribunal to the first respondent/claimant is excessive. According to them, the assessment of disability at 40% by the Doctor, who had examined the first respondent is on the higher side. It has also their contention that the Tribunal ought to have rejected the medical bills submitted by the first respondent/claimant amounting to Rs.4,33,462/-

3. The first respondent sustained injuries as a result of an accident caused by a tipper lorry bearing registration No. TN 07 D 9653 owned by second respondent and insured with the appellant/insurance company. The first respondent/claimant has preferred a claim before the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai in MCOP No.3305 of 2011 seeking compensation of Rs.12,85,000/- for the injuries sustained by him, as a result of an accident, which happened on 30.05.2011.

4. The first respondent/claimant has sustained the following injuries as a result of the accident:-

- "a. Crush injury over right foot
- b. Fracture over jaw and mandible
- c. Abrasions over right cheek
- d. Teeth were broken
- e. Contusion over both hands
- f. Multiple injuries all over the body."

5. The Tribunal, under the impugned award, directed the appellant/Insurance Company and the 2nd respondent/owner of the lorry to pay a compensation of Rs.6,41,465/- together with interest and costs to the first respondent/injured claimant for the injuries sustained by him as a result of the accident.

6. The details of the award passed by the Tribunal in favour of the claimant are as follows:

Head	Award passed by the Tribunal (Rs.)
Loss of income for six months	27,000/-
Transportation	10,000/-
Extra nourishment	5,000/-
Damage to clothes	1,000/-
Medical expenses	4,33,462/-
Attender charges	5,000/-
Pain and suffering	50,000/-
Loss of amenities	30,000/-
Disability of 40% @ Rs.2,000/- per percentage	80,000/-
Total	6,41,462/-

7. Heard Mr.J.Chandran, learned counsel for the appellant / Insurance Company and there is no representation on behalf of

the first and second respondents.

8. Before the Tribunal, the first respondent/injured claimant has filed nine documents, which were marked as Ex.P1 to Ex.P9 and has examined two witnesses on his side, namely, PW1-Mr.Dharmalingam, the claimant himself and PW2 - Dr.J.R.R.Thiagarajan, who examined him. On the side of the appellant/Insurance Company, one document was filed, which was marked as Ex.R1 and two witnesses were examined viz., RW1 and RW2 before the Tribunal.

9. The nature of injuries sustained by the first respondent/claimant has also not been disputed by the appellant/insurance company as seen from the evidence available on record. In this appeal, the appellant/insurance company has disputed mainly the assessment of disability of the first respondent/claimant by the Doctor at 40%. The disability certificate issued by the Doctor (PW2) has been marked as Ex.P9, which will reveal that the first respondent/claimant had sustained injuries as indicated supra. No contra evidence has been produced by the appellant/insurance company to disprove the same.

10. The Tribunal, therefore, has rightly accepted the disability certificate (Ex.P9) and has assessed the disability at 40%. Therefore, the first contention raised by the appellant with regard to the assessment of disability by the Tribunal has to be necessarily rejected.

11. Insofar as the second contention raised by the appellant/insurance company with regard to the compensation paid towards the re-imbursement of the medical bills amounting to Rs.4,33,462/- is concerned, the first respondent/claimant has filed all the medical bills issued by Apollo Hospital, which has been marked as Ex.P5 series. The Tribunal has considered the medical bills and has only thereafter, awarded a compensation of Rs.4,33,462/- towards reimbursement of medical bills.

12. The compensation awarded by the Tribunal, under various other heads, viz., loss of income for six months, transportation, extra nourishment, damage to clothing, attender charges, pain and suffering, loss of amenities and disability compensation at Rs.80,000/- calculated at Rs.2,000/- per percentage of disability for 40% disability, assessed by the Tribunal is a just compensation in the considered view of this court. This Court does not find any infirmity in the findings of the Tribunal as the total of the medical bills exceeds the sum awarded by the Tribunal.

13. Even though, the total of the medical bills works out to

more than Rs.5,00,000/-, the Tribunal has assessed the same only at Rs.4,33,462/- Considering the same, there is no scope for interference with regard to the assessment made by the Tribunal towards the medical expenses.

Conclusion:

14. For the foregoing reasons, there is no merit in this appeal. Accordingly, this Appeal shall stand dismissed.

15. The Appellant/Insurance Company is directed to deposit the Award amount together with interest from the date of claim petition till the date of deposit and costs, as assessed by the Tribunal, after deducting the amount, if any, already deposited, to the credit of MCOP.No.3305 of 2011, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter.

16. In the result, this appeal is dismissed. There is no order as to costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
(Court of Small Causes-V) Chennai.
2. The Section Officer
V.R.Section, High Court of Madras.

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