

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 3359 of 2019
and C.M.P. No. 19611 of 2019

United India Insurance Co. Ltd.,
Vani Complex,
Coimbatore Main Road,
Kinathukadavu. Appellant/3rd Respondent

Vs.

1.E. Sivaprasath1st Respondent/Petitioner

2.K. Baladhandayutham

3.V. Vijayakumar Respondents 2 & 3/RR1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 13.06.2018, made in M.C.O.P. No. 263 of 2014, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Coimbatore.

For Appellant : Mr. C. Paranthaman

For Respondent : M/s. L. Mouli (for R1)

R1 & R2 : Exparte before Tribunal

J U D G M E N T
सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed against the award dated 13.06.2018, made in M.C.O.P. No. 263 of 2014, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Coimbatore.

2.The appellant is the 3rd respondent in M.C.O.P. No. 263 of 2014, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Coimbatore. The 1st respondent/ claimant filed the said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.04.2013.

3. According to the 1st respondent, on the date of accident, viz., 25.04.2013, when he was riding in his Two-Wheeler bearing Registration No. TN 38 AJ 9439 on the Kulathur - Irugur road, the Lorry bearing Registration No. TN 45 Y 4336, belonging to the 3rd respondent, driven by the 2nd respondent in a rash and negligent manner without any danger light or without blowing horn, hit against the Two-Wheeler and caused the accident. In the said accident, the 1st respondent sustained grievous injuries and has taken treatment in KMCH, Coimbatore. The accident has occurred only due to rash and negligent driving by the 2nd respondent, driver of the Lorry belonging to the 3rd respondent. Hence, the 1st respondent filed the above claim petition, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained in the accident, against the 2nd respondent/ driver of the Lorry, 3rd respondent/ owner of the Lorry and the appellant/ insurer of the vehicle.

4. The respondents 2 and 3 remained exparte before the Tribunal.

5. The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent. The appellant contended that the accident has occurred on 25.04.2013, while the Fitness Certificate of the Lorry bearing Registration No. TN 45 Y 4336 has expired on 20.03.2013. Hence, for violation of policy condition, the appellant is not liable to pay any compensation to the 1st respondent and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked 12 documents as Exs.P1 to P12. The appellant did not let in any oral or documentary evidence. One document was marked as Ex.C1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 2nd respondent, driver of the Lorry belonging to the 3rd respondent and directed the appellant-Insurance Company to pay a sum of Rs.31,07,653/- as compensation to the 1st respondent at the first instance and recover the same from the 3rd respondent.

8. Against the said award dated 13.06.2018, made in M.C.O.P. No. 263 of 2014, the appellant-Insurance Company has come out with the present appeal.

9. Learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing negligence on the part of the 2nd respondent, driver of Lorry belonging to the 3rd respondent. The learned counsel appearing for the

appellant submitted that though he has raised grounds with regard to medical expenses, he is not disputing the medical expenses granted by the Tribunal. The learned counsel further submitted that the Tribunal erred in awarding Rs.2,49,297/- for transportation by flight by the family members along with 1st respondent from Coimbatore to Delhi. The amounts awarded by the Tribunal for pain and suffering and loss of amenities are excessive. The Tribunal has granted compensation on his own description without considering the oral and documentary evidence available before it and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent was studying IV year B.E. Computer Science and due to injuries, he did not attend the College for six months and not attended 6th semester examination. Due to the same, his education career was spoiled. He required specialized treatment in Delhi. Hence, his family members traveled to Delhi, while he was taking treatment, to attend him. The amount of Rs.2,49,297/- awarded for transportation is not excessive and the same is based on the documents produced by the 1st respondent. Due to the injuries, the 1st respondent lost marital prospects. The amounts awarded by the Tribunal for loss of amenities and pain and suffering are meagre and prayed for dismissal of the appeal.

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

12. From the materials on record, it is seen that the 1st respondent has proved that the accident has occurred due to rash and negligent driving by the 2nd respondent, driver of the Lorry belonging to the 3rd respondent. There is no error in the said finding, warranting interference by this Court.

13. As far as the quantum of compensation is concerned, the 1st respondent has claimed a sum of Rs.2,49,297/- for transportation. According to the 1st respondent, he required specialized treatment and hence, he was taken to Delhi for the same. There is nothing on record to show that the alleged specialized treatment taken by the 1st respondent was not available at Coimbatore or at Chennai. In such circumstances, the sum of Rs.2,49,297/- awarded by the Tribunal towards transportation expenses, including for the family members of the 1st respondent is excessive and the same is reduced to Rs.50,000/-. The 1st respondent in the claim petition has stated that he suffered disability as mentioned therein. The Tribunal referred the 1st respondent to the Medical Board and the Medical Board examined the 1st respondent and has given a report stating

that the 1st respondent has not suffered any disability. The Tribunal without any discussion with regard to loss of amenities suffered by the 1st respondent, erroneously awarded a sum of Rs.5,00,000/- towards the said head. The same is reduced to Rs.2,00,000/-. The 1st respondent has suffered injuries and has taken treatment as in-patient for a period of five months from 25.04.2013 to 30.05.2013, 17.10.2013 & 09.12.2014 to 21.12.2014 in KMCH, Coimbatore and subsequently, he was taken to Delhi on many occasions, where he continued his treatment for five months. The Tribunal has not granted any amount towards attendant charges. Considering the period of treatment, a sum of Rs.1,00,000/- is granted towards attendant charges. The sum of Rs.10,000/- awarded by the Tribunal for extra nourishment is meagre. The same is enhanced to Rs.50,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	50,000/-	50,000/-	Confirmed
2.	Medical expenses	19,18,356/-	19,18,356/-	Confirmed
3.	Injury	75,000/-	75,000/-	Confirmed
4.	Extra nourishment	10,000/-	50,000/-	Enhanced
5.	Attendant charges	-	1,00,000/-	Granted
6.	Pain and sufferings	3,00,000/-	3,00,000/-	Confirmed
7.	Loss of amenities	5,00,000/-	2,00,000/-	Reduced
8.	Damages to clothing & articles	5,000/-	5,000/-	Confirmed
9.	Transportation	2,49,297/-	50,000/-	Reduced
	Total	31,07,653/-	27,48,356/-	Reduced by Rs.3,59,297/-

14. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.31,07,653/- is modified to Rs.27,48,356/- along with interest and costs. The appellant

is directed to deposit the modified award amount along with interest and costs, now determined by this Court, less the amount already deposited, 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. 263 of 2014, at the first instance and recover the same from the 3rd respondent, owner of the vehicle. On such deposit, the 1st respondent is permitted to withdraw the modified award amount, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount, if any, lying in the credit of M.C.O.P. No. 263 of 2014, if the entire award amount has already been deposited. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsa
To

- 1.The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Coimbatore.
- 2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.C.Pararanthaman, Advocate Sr.5078
+1cc to Mr.L.Mouli, Advocate Sr.5785

C.M.A. No. 3359 of 2019

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