

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2434 of 2010

and

M.P.No.1 of 2010

(Through Video Conferencing)

The Oriental Insurance Co. Ltd.,
Branch Office, P.B.No.8,
Jothi Super Market, Thodupuzha.

... Appellant/Respondent No.2

Vs.

1.Chinnappa Gounder ...1st Respondent/Petitioner

2.A.D.Johny (AWB) ...2nd Respondent/ Respondent I

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 30.12.2009, made in M.C.O.P.No.1445 of 2007, on the file of Motor Accident Claims Tribunal and Principal Sub Court, Tiruppur.

For Appellant : Mr.K.Vinod

For R1 : Mr.Lokesh

for Mr.MA.P.Thangavel
For R2 : Exparte

J U D G M E N T

Heard the learned counsels for the appellant and the 1st respondent.

2. This Civil Miscellaneous Appeal has been filed, to set aside the Judgment and Decree dated 30.12.2009 passed in M.C.O.P.No.1445 of 2007 by the Motor Accident Claims Tribunal and Principal Subordinate Court, Tiruppur.

3. By the impugned order, the Tribunal has awarded a sum of Rs.3,07,900/- together with interest at 7.5% from the date of the claim petition, to the 1st respondent under the following heads:

Loss of earning power - 42% (3,500 X 12 X 11 X 42%)	Rs.1,94,040/-
Pain and sufferings	Rs. 15,000/-
Extra nourishment	Rs. 2,000/-
Transport	Rs. 1,000/-
Loss of amenities	Rs. 6,000/-
Medical expenses	Rs. 89,900/-
Total	Rs.3,07,940/-

4. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal on the ground that the Tribunal erred in applying 11 multiplier and in awarding the compensation towards the loss of earning power of Rs.1,94,040/- by determining the income of the 1st respondent / claimant as Rs.3,500/- per month.

5. The learned counsel for the appellant further submits that the nature of injury disclosed in Exhibit P-5, wound certificate stated that injury is only in the face of the 1st respondent and therefore, it is not possible to come to a conclusion that the appellant had in permanent disability. It is therefore submitted that the Tribunal erred in awarding the above compensation by applying multiplier. He further submits that the compensation can be restricted to a sum of Rs.1,00,000/-.

6. Per contra, the learned counsel for the 1st respondent/claimant submits that the impugned judgment is well reasoned and requires no interference. He further submits that the 1st respondent is not an agriculturist but a cooli. It is submitted that the 1st respondent / claimant was working in the agricultural farms on daily wages by carrying weight on his head. Therefore, it is not open for the appellant Insurance Company to state that no permanent disability.

7. The learned counsel for the 1st respondent further submits that as per the Exhibit P5, the 1st respondent has 50% permanent disabilities and the Tribunal has restricted the permanent disabilities to 42% while determining the compensation.

8. I have considered the arguments advanced by the learned counsels for the appellant and the 1st respondent/claimant.

9. Though several grounds were raised in this appeal on the amount that has been awarded as compensation by the Tribunal, I find no reason to interfere with the impugned judgment in as much as the appellant has not given any contra evidence to substantiate that there was no permanent disability on account of the injury.

10. The Tribunal has relied on Exhibit P5 wound certificate, which shows that the nature of injury was severe in nature and it was not merely confined to the face of the 1st respondent / claimant. Ultimately, there is finding of fact which has been given by the Tribunal, which cannot be said to be perverse in absence of material before this court to disbelieve the same. Though Exhibit P5 wound certificate certifies that the respondent had suffered 50% disability, the Tribunal has considered the disability as 42% for calculating the above compensation. Thus, the compensation awarded appears to be a just compensation. In my view, the appellant has not made out any grounds to interfere with the impugned judgment.

11. The impugned judgment of the Tribunal is well reasoned and therefore requires no interference. The Tribunal has considered the evidence on record before coming to a conclusion that the 1st respondent claimant was entitled to the aforesaid compensation. Under the circumstances, I am inclined to dismiss this Appeal.

12. The appellant is directed to deposit the balance amount and cost if any, that was ordered but has not been deposited, together with interest at 6% per annum from the date of filing of the claim petition, within a period of six weeks from the date of receipt of a copy of this judgment. The 1st respondent is permitted to withdraw the same together with interest by filling suitable application before the Tribunal.

13. Accordingly, the present Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal
and Principal Sub Court, Tiruppur.

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PVS (CO)
GMY (27/04/2021)



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