



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2714 of 2014
and M.P.No.1 of 2014

The Branch Manager
United India Insurance Co. Ltd.
Branch Office, Bye pass Road
Dharmapuri.

...Appellant/II Respondent

Vs.

1.A.Thirumal

...I Respondent/ Petitioner

2.V.R.Balasubramaniam

...II Respondent/I Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.04.2014 made in M.C.O.P.No.615 of 2012 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Dharmapuri.

For Appellant : Ms.I.Malar

For R1 : Mr.M.Selvam

For R2 : No appearance

J U D G M E N T

This matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 07.04.2014 made in M.C.O.P.No.615 of 2012 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Dharmapuri.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.615 of 2012 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Dharmapuri. The 1st respondent filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.04.2012.



3. According to the 1st respondent, on the date of accident i.e., on 25.04.2012 at 10.25 a.m., while he was riding in his motorcycle from Vaniyambadi towards his native place at K.Papparakatty via Tirupatthur, near Thali Aruthanmedu on Vaniyambadi to Tirupatthur Main Road, the bus belonging to the 2nd respondent, driven by its driver in a rash and negligent manner at high speed, dashed against the motorcycle driven by the 1st respondent and caused the accident. In the accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the 2nd respondent and the appellant/Insurance Company.

4. The 2nd respondent, owner of the bus, remained exparte before the Tribunal.

5. The appellant/Insurance Company being insurer of the said bus filed counter statement denying the averments made by the 1st respondent and stated that the accident did not occur due to rash and negligent driving by the driver of the bus belonging to the 2nd respondent. The 1st respondent has to prove that the bus belonging to the 2nd respondent was insured with the appellant and the policy was in force. The driver of the bus did not possess valid driving license to drive the vehicle at the time of accident. Therefore, the appellant is not liable to pay any compensation to the 1st respondent. The appellant/Insurance Company has also denied the age, nature of injuries and treatment taken by the 1st respondent. 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, Dr. Krishnakumar was examined as P.W.2 and thirteen documents were marked as Exs.P1 to P13. The appellant/Insurance Company 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 bus belonging to the 2nd respondent and directed the appellant/Insurance Company being insurer of the said bus to pay a sum of Rs.9,43,800/- as compensation to the 1st respondent.

8. Against the said award dated 07.04.2014 made in M.C.O.P.No.615 of 2012, the appellant/Insurance Company has come out with the present appeal challenging the quantum of compensation granted by the Tribunal.

9. The learned counsel appearing for the appellant/Insurance Company contended that P.W.2/Doctor assessed the disability of



the 1st respondent without any basis, the same is not based on any medical guidelines and the disability assessed by P.W.2/Doctor is excessive. The 1st respondent failed to prove the avocation and income. The Tribunal erroneously fixed a sum of Rs.6,500/- per month as notional income of the appellant and adopted multiplier method for awarding compensation. The 1st respondent was aged 38 years at the time of accident and the Tribunal applied multiplier '16' instead of '15'. The Tribunal erred in awarding compensation separately for loss of earning power and loss of income during treatment period. The Tribunal failed to see that there is no evidence with regard to reduction of income from the business after the accident. The Tribunal mechanically adopted multiplier method 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 and prayed for dismissal of the appeal.

11.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for the 2nd respondent either in person or through counsel.

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

13.From the materials on record, it is seen that it is the case of the 1st respondent that in the accident, he suffered fracture in the left femur bone and multiple injuries all over the body. According to the 1st respondent, he has taken treatment as in-patient in Ganga Hospital, Coimbatore, from 25.04.2012 to 03.05.2012 and as out-patient from 04.05.2012. The 1st respondent examined himself as P.W.1, the Doctor as P.W.2 and marked A.R. copy, discharge summary and medical bills as Exs.P2, P3 and P7 to prove the same. P.W.2/Doctor examined the 1st respondent and certified that the 1st respondent has suffered 60% disability. P.W.2/Doctor deposed about the nature of injuries and treatment taken by the 1st respondent. P.W.2/Doctor deposed that due to fracture and other injuries, the movements of the 1st respondent are restricted and the 1st respondent cannot do the work as he was doing earlier. The 1st respondent has claimed that he is the owner of the ten Tyre lorry and was transporting goods throughout India and was earning a sum of Rs.20,000/- per month at the time of accident. The 1st respondent has produced Ex.P5/R.C.Book to show that he is the owner of the lorry and also produced driving license. The 1st respondent failed to prove that he was earning a sum of Rs.20,000/- per month. In the



absence of any document, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the appellant. The Tribunal considering the evidence of P.W.2/Doctor, disability certificate and nature of work done by the 1st respondent, adopted multiplier method. The Tribunal in addition to the amount granted towards loss of earning power by adopting multiplier method, granted a sum of Rs.19,500/- towards loss of income during treatment period. The accident is of the year 2012 and the monthly income fixed by the Tribunal is meagre. In view of the same, excess amounts granted by the Tribunal towards transportation and loss of earning are not interfered with. There is no error in awarding compensation for loss of income during treatment period separately in the facts of the present case.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.9,43,800/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Chief Judicial Magistrate
Motor Accident Claims Tribunal, Dharmapuri.

Copy To

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

+1cc to M/s.T.Ravichandran, Advocate, S.R.No.42813

+1cc to M/s.M.Selvam, Advocate, S.R.No.42678

C.M.A.No.2714 of 2014
and M.P.No.1 of 2014

KV(CO)

RGA(03/09/2021)