

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2075 of 2017
and
C.M.P.No.11061 of 2017

M/s.National Insurance Co. Ltd.,
Divisional Office,
First floor, KRT Building
Promenade Road
Trichy-1

.... Appellant/2nd Respondent

Vs.

1.Raji1st respondent/Petitioner
2.A.Joseph Stanley Chandran
...2nd Respondents /1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.06.2016 made in M.C.O.P.No.413 of 2015 on the file of Motor Accident Claims Tribunal, (Chief Judicial Magistrate) at Perambalur.

For Appellant : Mrs.R.Sree Vidhya
For R1 : Mr. T.Gobinath

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Appellant/Insurance Company, challenging the award dated 03.06.2016 made in M.C.O.P.No.413 of 2015 on the file of Motor Accident Claims Tribunal, (Chief Judicial Magistrate) at Perambalur.

2. The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.413 of 2015 on the file of Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Perambalur. 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 18.05.2011.

3. According to the 1st respondent on 08.05.2011 at about 17.00 hours, while he was riding his TVS Champ bearing Reg. No.TN50P3132 on Trichy-Ariyalur Main Road near Keela Valadi, Indian Bank the driver of the Yamaha Motor Cycle bearing Reg. No.TN-45-Y-3132 belonging to the 2nd respondent and insured with the appellant driven by the 2nd respondent in a rash and negligent manner and dashed against the 1st respondent's vehicle and caused the accident. In the said accident, the 1st respondent sustained multiple injuries all over his body. Therefore the 1st respondent filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation against the second respondent and appellant-Insurance Company.

4.The second respondent being the owner of the vehicle 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 did not occur as alleged by the 1st respondent. At the time of accident, the 2nd respondent was driving the vehicle slowly and carefully following all the traffic rules. The 1st respondent was riding his TVS Champ in a high speed and rash and negligent manner without any signal and proceeded the vehicle on the wrong side of the road and caused the accident. In any event the accident occurred only due to the negligence on the part of the 1st respondent. Therefore, the appellant-Insurance Company is not liable to pay any compensation to the 1st respondent. The 1st respondent has to prove his age, avocation and income by producing valid documents. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.Selvaraj was examined as P.W.2, 9 documents were marked as Exs.P1 to P9. On the side of the appellant, no oral and documentary evidence was let in.

7. The Tribunal, after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the Yamaha belonging to the 2nd respondent herein and directed the appellant/Insurance

Company to pay a sum of Rs.11,47,562/- as compensation to the 1st respondent.

8. Challenging the said award dated 03.06.2016 made in M.C.O.P.No.413 of 2015, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

9. The learned counsel for the appellant/Insurance Company contended that the Tribunal failed to note that P.W.2 is not the Doctor who treated the 1st respondent and the assessment of disability is not in accordance with Schedule-I of Workmen Compensation Act and the assessment of disability cannot be accepted and same is excessive. The loss of earning fixed by the Tribunal is on the higher side. In any event, the total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

10. Per Contra, the learned counsel appearing for the 1st respondent contended that in the accident, the first respondent sustained multiple injuries all over the body, including fracture in the left leg below the knee. Due to the injuries, he cannot do the work as he was doing earlier. To prove the injuries, the 1st respondent examined himself as P.W.1. and Doctor as P.W.2. P.W.2 deposed that the first respondent has suffered functional disability and due to the injuries, his left leg has shortened by 5 cms. The Tribunal, considering the evidence of P.W.2 /Doctor and the nature of injuries, applied multiplier method and awarded compensation and the same is not excessive and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the first respondent and perused all the materials available on record.

12. It is the contention of the 1st respondent that in the accident, he sustained fracture in the left leg, below knee and underwent surgery. P.W.2/Doctor examined the 1st respondent and certified that he has suffered 63% disability and issued Ex.P.7 disability certificate to that effect. The appellant did not let in any contra evidence to disprove the evidence of P.W.1 and P.W.2/Doctor. Considering the age and nature of injuries, the

Tribunal adopted multiplier method for awarding compensation towards loss of earning capacity and the same is proper. The 1st respondent claimed that at the time of accident, he was working as painter and was earning Rs.10,000/- per month. The Tribunal fixed meager sum of Rs.6,000/- and deducted 1/10th towards his Personal expenses and applying multiplier 17, granted compensation for loss of earning capacity. The correct multiplier for age 35 is 16. The Tribunal has not granted any amount for loss of amenities and extra Nourishment. Further the amount awarded by the Tribunal for pain and suffering is meager. In view of the above facts, the amount awarded by the Tribunal as compensation to 1st respondent is not interfered with.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the amount of 11,47,562/- 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 award amount with interest and costs, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.413 of 2015. 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. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS IX)

/true copy/

Sub Asst. Registrar

vsn

To

1.The Chief Judicial Magistrate
The Motor Accidents Claims Tribunal
Perambalur.

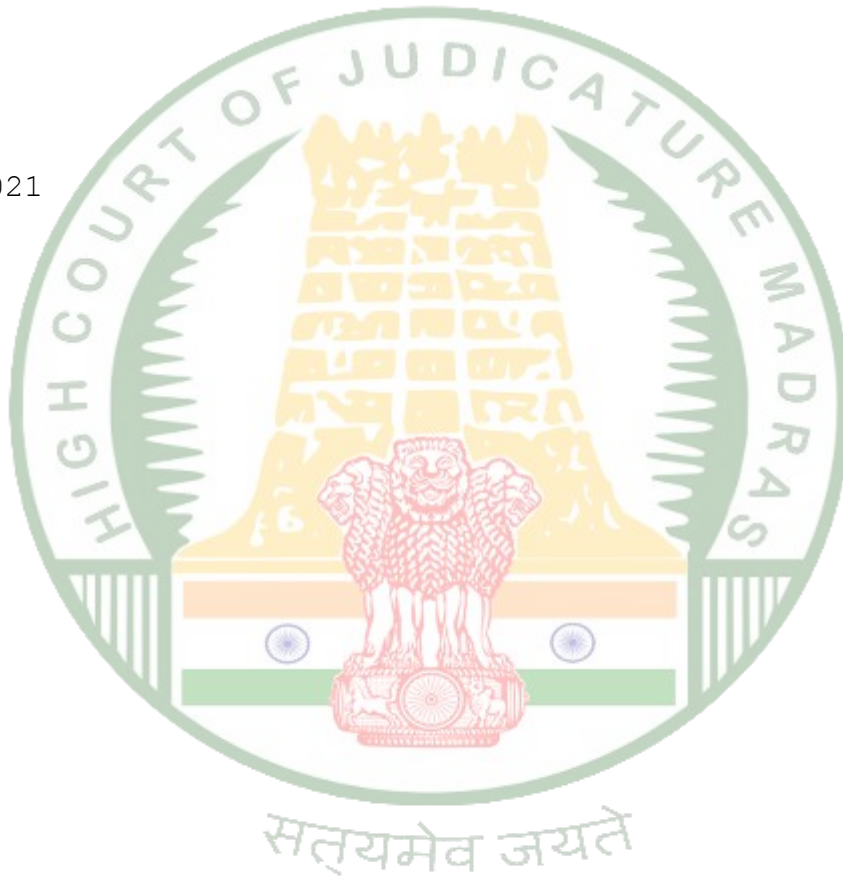
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2.The Section Officer
V.R.Section
High Court, Chennai.

+1 cc to Mr.R.Sree vidhya Advocate sr9967
+1 cc to Mr.T.Gobinath Advocate sr9871

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