



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)NO.729 of 2009

The Oriental Insurance Company Limited,
represented by its Divisional Manager,
Madurai. :Appellant/Second Respondent

.vs.

1.Mahalingam :1st Respondent/petitioner

2.Punithavalli :Second Respondent/first respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award and decreetal award made in M.C.O.P.No.330 of 2002, dated 7.7.2008, on the file of the Motor Accident Claims Tribunal/Ist Additional Subordinate Judge, Madurai.

For Appellant :Mr.K.Bhaskaran

For Respondent-1 :Mrs.P.Jessi Jeeva Priya

For Respondent-2 :No appearance

JUDGMENT

Heard Mr.K.Bhaskaran, learned counsel appearing for the appellant/Insurance Company and Mr.P.Jessi Jeeva Priya, learned counsel appearing for the first respondent and perused the materials available on record.

2.This appeal is directed against the award passed by the Motor Accident Claims Tribunal(Ist Additional Sub-Court), Madurai in M.C.O.P.No.330 of 2002, dated 7.7.2008.

3.The claim petition was filed by the first respondent herein seeking compensation of Rs.3 lakhs. According to him, on 14.8.2000, when he was engaged in agricultural work, he was hit by a tractor which was driven by one Frederick. Immediately, he was



taken to Quality Care Hospital where he took treatment as inpatient from 14.8.2000 to 22.9.2000.

4.The appellant filed a counter affidavit stating that there was an inordinate delay of 38 days in lodging the complaint and the vehicle was not involved in the accident. It is further contended that the claim was excessive and that the driver of the vehicle was not having valid and effective driving licence. Hence the Insurance Company is not liable to pay the compensation.

5.Before the Tribunal, the claimant examined himself as P.W.1 and in his evidence, he has stated that he is working in the field of one Kalyanasundaram and due to his negligence, he sustained injury. A Private Investigator was examined as R.W.1 and he filed his report Ex.R1. According to R.W.1, the claimant did not sustain injury when he was working in his agricultural land. R.W.3 states that the claimant did not sustain injury from the Tractor but when the power Triller was operated, it caused injury to the claimant. Ex.R1 and Ex.R3 show that when the land was ploughed, the claimant sustained injury. It also came from the evidence that the Power Triller was insured with the appellant Insurance Company at the relevant point of time. So, the Tribunal accepting the case of the claimant held that the claimant sustained injury due to the negligence of the driver of the first respondent.

6.With regard to the quantum, the claimant would depose that he sustained six crush injuries in the left leg. For the fracture suffered by him, he underwent surgery and on 15.8.2000 plate was also fixed and he was in continuous treatment from the date of accident ie., from 14.8.2000 to 22.9.2000.

7.The claimant produced Ex.P3 to prove the injury sustained by him.Ex.P5 is the Discharge Summary Certificate. Ex.P6 to Ex.P9 are the medical bills. Ex.P10 is the X-ray. Ex.P11 is the Disability Certificate which shows that he sustained 25% disability. Dr.Thulasiram is examined as P.W.2 to prove the disability suffered by the claimant. On the basis of the evidence adduced by the claimant, the Tribunal awarded Rs.25,000/- for disability Rs.63,325/- for medical expenses, Rs.200/- for transportation, Rs.15,000/- for pain and suffering and Rs.9,000/- for loss of income and in total awarded a sum of Rs.1,12,525/- as compensation.

8.Mr.K.Bhaskaran, learned counsel for the appellant would argue that the delay of 38 days was not explained by the claimant and moreover, the award is on the higher side.

9.I am unable to agree with the submission of the learned counsel for the appellant for the reason that P.W.1 has given



evidence stating that from 14.8.2000 to 21.9.2000, he was in hospital as inpatient and only on 20.9.2000, the Police came to the Hospital and received the complaint. It is also seen that the claimant was 33 year old and he suffered permanent disability, in view of the injuries sustained in the accident. So in my considered view there is no good reason to interfere with the finding rendered by the Tribunal and thus the appeal deserves no merit consideration .

10.In the result, this Civil Miscellaneous Appeal is dismissed confirming the award of the Tribunal. It is represented by the learned counsel for the appellant that 50% of the award amount has been deposited to the credit of the claim petition. Since the appeal is dismissed, the appellant is directed to deposit the balance award amount together with proportionate accrued interest and costs to the credit of claim petition within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs, by filing necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

vsn

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The First Additional Subordinate Judge,
(Motor Accident Claims Tribunal),
Madurai.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.K.Bhaskaran , Advocate SR.No.26558

JUDGMENT MADE IN
C.M.A (MD) NO. 729
of 2009
18.12.2020

KM (19.01.2021) 4P 5C