



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.02.2020

CORAM:

THE HONOURABLE Mrs. JUSTICE R.THARANI

WEB COPY

C.M.A. (MD) .No.717 of 2013

and

MP (MD) No.1 of 2013

The Manager,
Oriental Insurance Company Co., Limited,
Thoothukudi Branch,
Thoothukudi. ... Appellant/3rd Respondent

Vs.

1.M.Akbar Jathali ... 1st Respondent/Petitione

2.Porchezian ... 2nd Respondent/1st
Respondent

3.Neela Sea Foods Pvt Ltd.,
Ettayapuram Road,
Thoothukudi. ... 3rd Respondent/2nd Respondent

(2nd respondent is given up as he is not a necessary party)

PRAYER: This appeal has been filed under Section 173 of M.V. Act, 1988, against the award dated 23.06.2003 passed in M.C.O.P.No.47 of 2002 on the file of the Motor Accident Claims Tribunal, Sub Court, Devakottai.

For Appellant : Mr.C.Jawaharavindran

For Respondent : No Appearance

JUDGMENT

This appeal has been filed against the award dated 23.06.2003 passed in M.C.O.P.No.47 of 2002 on the file of the Motor Accident Claims Tribunal, Sub Court, Devakottai.

2.The appellant herein is the third respondent. The first respondent herein was the claimant, and the respondents 2 and 3 herein are the respondents 1 and 2 in M.C.O.P.No.47 of 2002.

3.The first respondent filed a petition in M.C.O.P.No.47 of 2002 claiming a compensation of Rs.6,82,500/- for the injuries sustained by him in an accident. The Tribunal awarded a sum of Rs.3,54,300/- as compensation. Against which, the appellant preferred this appeal.

<https://hcservices.ecourts.gov.in/hcservices/>



4.The case of the claimant in M.C.O.P.No.47 of 2002 is as follows:-

On 15.04.2001, at about 11..30 a.m, when the claimant was riding his motor cycle bearing Reg.No.TN-04-132 near M.R.Pattinam, Water Tank, a Container Lorry bearing Reg.No.TN-69-C-196 was driven by the driver in a rash and negligent manner from the opposite direction dashed against the two wheeler of the claimant. Due to the said impact, the claimant sustained injuries and he took treatment as inpatient for a period of 8 months. The lorry was insured with the third respondent Insurance Company. The claimant has undergone three surgeries and he was not able to stand properly. Hence, the claimant claimed a sum of Rs.6,82,500/- as compensation.

5.The case of the third respondent in M.C.O.P.No.47 of 2002 is as follows:-

The age, occupation and income of the claimant has to be proved. The accident was not due to the rash and negligent driving of the lorry driver. The accident was only due to the rash and negligent driving of the claimant. The amount claimed is excessive.

6.After hearing both sides, the Tribunal awarded a sum of Rs.3,54,300/- as compensation. Against which, the appellant preferred this appeal.

7.The case of the appellant is that the accident is due to rash and negligent driving of the claimant. At least contributing negligence has to be fixed on the claimants and the quantum fixed by the Tribunal is too excessive.

8.It is seen that P.W.1 to P.W.3 deposed that the accident was due to the rash and negligent driving of the lorry driver. Ex.P.1/FIR, reveals that a case was registered against the lorry driver. There is no rebuttal evidence on the side of the appellant. There is no dispute regarding the Insurance Policy. Hence, there is nothing wrong in fixing the liability on the Insurance Company.

9.On the side of the claimant, it is stated that the claimant was 30 years old and he was running a grocery shop with his partner and that he was earning Rs.6000/- per month and that the amount fixed for loss of income has to be enhanced. On the basis of Ex.P.2, Ex.P.4 to Ex.P.9 and on the basis of the evidence of P.W.1 to P.W.3, the tribunal has fixed the disability as 40% and fixed the age of the claimant as 35-40 years and has fixed the income as Rs.3000/- per month and awarded a sum of Rs.1,24,800/- towards permanent partial loss of income and fixed Rs.27,000/- as temporary loss of income for the period of 9 months.



10.Ex.P.2 and Ex.P.4 to Ex.P.9 reveals that the petitioner sustained injuries in the accident and the evidence of P.W.3 support the case of the claimant. Ex.P.4 and Ex.P.11 reveals that the claimant has undergone surgeries. On the basis of Ex.P.4 & Ex.P.11, the Tribunal has awarded a sum of Rs.86,000/- towards Medical expenses. P.W.3 has deposed that another surgery is necessary. The tribunal has awarded a sum of Rs.20,000/- towards Future Medical expenses. Considering Ex.P.4 and Ex.P.11 and the evidence of P.W.3, it is decided that the amount awarded towards medical expenses is correct.

11.On the basis of the evidence of P.W.3 and on the basis of Ex.P.2, Ex.P.4 to Ex.P.9, the tribunal fixed the disability as 40% and awarded a sum of Rs.50,000/- as compensation. The Tribunal has awarded a sum of Rs.25,000/- towards pain and suffering, awarded a sum of Rs.5,000/- towards Extra Nourishment, awarded a sum of Rs.5,000/- towards attendant charges, awarded a sum of Rs.500/- towards damages to cloths and ornaments, awarded a sum of Rs.10,000/- towards damages to vehicle, awarded a sum of Rs.1000/- towards Transport Expenses which are all reasonable. Totally, the Tribunal has awarded a sum of Rs.3,54,300/- as compensation. The compensation fixed by the Tribunal on the basis of the documents and evidence is correct and reasonable.

12.In the above circumstances, there is nothing sufficient enough to interfere in the award passed by the Tribunal. Accordingly, the award passed by the Tribunal in M.C.O.P.No.47 of 2002 on the file of the Motor Accident Claims Tribunal, Sub Court, Devakottai, is hereby, confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13.The appellant / Insurance Company Ltd., is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, and cost, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the claimant / first respondent herein is permitted to withdraw the amount after deducting amount, if any, already received by him. The claimant is not entitled to interest for the default period if there is any.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal, Sub Court,
Devakottai.

2.V.R.Section, (2 Copies)
Madurai Bench of Madras High Court,
Madurai.

C.M.A. (MD) .No.717 of 2013
and
MP (MD) No.1 of 2013
19.02.2020

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