

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.3462 of 2013

and

M.P.No.1 of 2013

M/s.Cholamandalam MS General Ins.Co.Ltd.,
Dare House, 2nd Floor,
N.S.C. Bose Road,
Chennai - 600 001.

... Appellant

Vs.

1. Subramanian

2. Shanthi

[2nd Respondent ex-parte in Lower Court]

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.166 of 2010, dated 15.11.2011 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Tindivanam.

For Appellant : M/s.Harini for
Mr.N.Vijayaraghavan

For Respondents: Mr.T.Dhanyakumar (for R1)
: Ex-parte (for R2)

J U D G M E N T

This Civil Miscellaneous Appeal is directed as against the judgement and decree passed in M.C.O.P.No.166 of 2010, dated 15.11.2011 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Tindivanam.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that on 07.01.2010, when he was travelling in his two wheeler viz., TVS-50 along with his grand daughters, the driver of the second respondent's vehicle had driven the vehicle in a rash and negligent manner and dashed

against the claimant. Due to which, his grand daughter sustained grievous injuries and died on the spot. He sustained multiple injuries all over the body such as head injury, sub dural heamatoma, anterior dislocation of right shoulder with fracture, fracture left clavicle, fracture left femur and medial fibula and multiple injuries all over the body. Immediately, he was taken to JIPMER Hospital, Puducherry where he was treated as inpatient till 02.02.2010. He undergone various surgeries and thereafter, he was taken to Appasamy Hospital, Chennai and admitted on 06.02.2010 till 20.02.2010 and undergone various surgeries. Due to the injury sustained by him, he incurred huge expenses and also he was bedridden. He being agriculturist, he could not able to sit and stand or walk. Hence, the claimant filed a claim petition for compensation.

4. Resisting the same, the second respondent filed a counter and stated that only due to rash and negligent driving of the claimant, the accident took place and as such, the second respondent is not at all liable to pay any compensation as claimed by the claimant.

5. On the side of the claimant P.W.1 to P.W.3 were examined and marked Exs.P.1 to P.17. On the side the respondents no one was examined and no exhibits were marked.

6. On consideration of oral and documentary evidence, the Tribunal has awarded a compensation at Rs.9,04,966/- payable by the second respondent. Aggrieved by the same, the second respondent preferred the present Civil Miscellaneous Appeal.

7. The learned counsel for the appellant/Insurance Company submitted that though the Doctor who assessed the claimant and gave disability certificate at 84%, there is no functional disability suffered by the claimant. The claimant being an agriculturist, is doing his regular work and as such, the Tribunal ought not to have awarded very huge compensation, that too for partial disability. The Tribunal ought not to have adopted the multiplier method, when the claimant sustained partial disability.

8. Per contra, the learned counsel for the first respondent/claimant submitted that though the claimant being an agriculturist, he sustained multiple fracture all over the body. The Doctor who examined as P.W.3 assessed 84% of permanent disability. It is functional disability and he could not even walk sit or stand and as such, the Tribunal rightly awarded the compensation and prayer for the dismissal of the appeal.

9. Heard the learned counsel for the appellant/Insurance Company as well as the learned counsel for the first respondent/claimant.

10. The claimant along with his grand daughters were travelling in his Two Wheeler on 07.01.2010. At that time, the second respondent's driver had driven the vehicle in a rash and negligent manner and dashed against the claimant's vehicle. Due to which the claimant's grand daughter sustained grievous injuries and died on the spot. Insofar as the claimant, he sustained multiple fracture on all over the body as follows:-

"Head injury, sub dural heamatoma, anterior dislocation of right shoulder with fracture, fracture left clavicle, fracture left femur and medial fibula and multiple injuries all over the body."

11. The claimant was admitted to the JIPMER Hospital, Puducherry where he had taken treatment as inpatient from 07.01.2010 to 02.02.2010 and thereafter, from 06.02.2010 to 20.02.2010, he had taken treatment as inpatient at Appasamy Hospital, Arumbakkam, Chennai. He produced medical bills which were marked as Ex.P.5 to Ex.P.8. He being an agriculturist his hands and legs are very important to do the agricultural work. Admittedly, he sustained fracture on his right shoulder and fracture on his hip and right leg.

12. On a perusal of the deposition of P.W.3, it reveals that he suffered functional disability to the tune of 84%. Therefore, the Tribunal rightly adopted the multiplier method and accordingly awarded the compensation. Therefore, this Court finds no merits in this Appeal and it is liable to be dismissed.

13. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, the connected Miscellaneous Petition is dismissed. No costs.

सत्यमेव जयते
s/d-

Assistant Registrar(CS III)

True Copy

Sub-Assistant Registrar

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To

1. Motor Accidents Claims Tribunal,
The Principal Subordinate Judge, Tindivanam.

2. The Section Officer,
V.R. Section, High Court of Madras.

+1 CC to Mr.T. Dhanya Kumar, Advocate sr 24116.

C.M.A.No.3462 of 2013

KV(CO)
SP(29/06/2021)



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