

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.No.411 of 2018

Sarath Kumar

...Appellant

Vs.

1.Kumar

2.A.K.Mahalingam

3.Mani Mohan Singh

4.National Insurance Company Limited,
Rep. By its Manager, Kangeyam, Tiruppur.

5.National Insurance Company Limited,
Rep. By its Manager, 1st Floor, Karthikeya Complex,
403, B-10, Mettur Main Road, Bhavani – 638 302. ..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order made in M.C.O.P.No.389 of 2010 on the file of the Motor Accident Claims Tribunal-cum-Sub-ordinate Court, Bhavani, Erode District dated 09.07.2014.

For Appellant : Mr.C.Kulanthaivel

For Respondents : Mrs.R.Sree Vidhya for R4

R1, R2 & R3 – No Appearance

EJUDGMENT

The claimant in M.C.O.P.No.389 of 2010 on the file of the Motor Accident Claims Tribunal / Sub-Court, Bhavani, Erode District is the appellant herein. Aggrieved by the quantum of compensation granted by judgment dated 09.07.2014 for the injuries suffered to him, he has filed the present Civil Miscellaneous Appeal.

2.The Appellant was aged 18 years at the time of accident and was working as a Coolie. The accident occurred on 18.06.2010 at about 11.00 a.m., when the appellant was travelling in a mini Auto bearing registration number TN 33 AD 9202 driven by the 1st respondent and carrying yarn materials and was tasked to bring back piece materials for loading and unloading. It must be mentioned that that he is working as Coolie and as a loadman.

3.According to the appellant, the 1st respondent, who drove the mini Auto in a rash and negligent manner without observing traffic rules and regulations, suddenly turned at high speed and capsized. Owing to the

accident, the appellant suffered injuries as follows:-

- 1.Fracture over the left hand.
- 2.Lacerated wound over the left leg, left shoulder.
- 3.Contusion over the chest.

3.It is stated that the appellant was taking treatment as an inpatient for about 28 days from 18.06.2010 to 16.07.2010. With respect to the accident, the Erode North Police had also registered a First Information Report in Crime No.957 of 2010 under Sections 279 & 337 IPC. The appellant claimed that he is entitled for a total compensation of Rs.5,00,000/-.

4.The 2nd respondent / National Insurance Company Limited had joined issue and stated that the 1st respondent did not have driving licence to drive mini door Auto. He had no licence to drive any category of vehicle. It was also stated that there was negligence in the driving of the Auto but, primarily, the defence taken was that the driver did not have licence to drive the mini door Auto and therefore, it was claimed that even if any, compensation is deemed to be payable, the Insurer was not under liability to

indemnify the insured and therefore, the principle of pay and recovery should not have been stated.

5.During the course of the trial, the claimant was examined as P.W.1 and he also examined Dr.R.Krishnasamy as P.W.2 and examined an independent witness, Mr.K.Saravanan as P.W.3. The respondents also examined two witnesses as R.W.1 and R.W.2. The appellant marked Exs.P1 to P12 and the relevant documents would be quite apart from the documents relating to the registration of a criminal case by the jurisdictional police. The injury certificate was marked as Ex.P5, the hospital slip as Ex.P7, disability certificate as Ex.P8 and X-ray report as Ex.P10. The respondents also marked Ex.R2, the copy of the insurance policy.

6.On the basis of the evidence adduced, the Tribunal examined the points, which had been framed for consideration.

7.With respect to the 1st point, which was related to negligence and the cause for the accident, the Tribunal found that the claimant was travelling

in a mini door Auto and that it was actually driven in a fast and negligent manner and that it capsized while taking a turn and that the appellant herein suffered injuries, owing to such negligent driving. In this connection, reliance was also placed on the First Information Report and connected police documents submitted by the police. In view of the evidence, negligence was placed on the driver of the vehicle. I would confirm that particular finding.

8.The Tribunal then proceeded to determine the compensation granted and in this connection, examined Ex.P7, discharge summary and Ex.P10, X-ray report. They also took into consideration the fact that the appellant was an inpatient for 28 days owing to the injuries suffered. The age of of the appellant was determined as 18 years. It was stated that he would have earned a monthly income of Rs.3,000/-. I would interfere with that particular monthly income and determine the same to Rs.5,000/-. The Tribunal thereafter, observed that P.W.2 had assessed the disability at 30%. However, the Tribunal had interfered with the same and held that 15% disability would be suffice and granted a sum of Rs.2,000/- per disability.

9. With respect to the disability, I would interfere with what was taken into consideration by the Tribunal since, a young boy of 18 years, working as a loadman would indicate that he had frustrated his studies for the purpose of earning money. Therefore, there could not be any alternate source of employment for him. Working as a loadman or as a coolie would be his avocation for his life. This kind of work requires that there should be perfect functioning of both hands and legs. He has suffered fractures at the hand, which would affect his work as a loadman. It is seen that he was travelling in the mini Door Auto carrying raw materials for the purpose of unloading them and bringing back finished products and to unload the same. Therefore, while travelling in the mini Auto, he was also entrusted with goods which have to be unloaded. Further goods have to be loaded and later unloaded at the point of delivery. Injury at the hand would certainly affect his work therefore, I would determine the disability at 30%. The Tribunal had granted Rs.2,000/- per percentage of disability, which I would modify and grant a sum of Rs.3,000/- per disability. Therefore, for the 30% disability, the loss of income would be $(3,000 \times 30) = \text{Rs.90,000/-}$.

10.I would not interfere with the other heads namely, for loss of pain and suffering at Rs.10,000/-, for extra nourishment at Rs.5,000/-, for transport charges at Rs.1,000/-, for loss of articles and clothes Rs.1,000/-. I would grant an additional sum of Rs.10,000/- towards attender charges and Rs.2,000/- towards loss of income. Therefore, the total compensation is modified as follows:-

<i>Heads</i>	<i>Amounts</i>
Permanent disability	Rs.90,000/-
Pain and suffering	Rs.10,000/-
Extra Nourishment	Rs.5,000/-
Transport charges	Rs.1,000/-
Loss of articles and clothes	Rs.1,000/-
Loss of income (for a period of one month)	Rs.5,000/-
Attender charges	Rs.10,000/-
Total	Rs.1,22,000/-

11.The Civil Miscellaneous Appeal is allowed to that extent enhancing the compensation which had been determined as Rs.50,000/- to Rs.1,22,000/-. The Insurance company shall deposit the entire compensation amount i.e., Rs.1,22,000/-, less the amount if any already deposited, with interest at 7.5% from the date of filing of the petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. I

am informed, there is a delay of 908 days in filing the appeal, for which period, the Insurance company need not pay interest at 7.5% per annum. On such deposit, the appellant is permitted to withdraw the same. No order as to costs.

15.03.2022

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Index: Yes/No

Internet: Yes/No

Speaking/Non-speaking order

To-

The Motor Accident Claims Tribunal,
Sub-Court,
Bhavani, Erode District.

C.M.A.No.411 of 2018

C.V.KARTHIKEYAN, J.

KKN

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