

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

CMA. No.192 of 2011

&

M.P.No.1 of 2011

United India Insurance Company Limited,
5/B, Zahir Hussain Rd.,
Salem Road,
Rasipuram Post,
Namakkal District.Appellant/2nd Respondent

Vs

1.R.Ravi1st Respondent/Petitioner
2.M.S.Palaniandavar Feeds2nd Respondent/Respondent
(R2 remained ex parte in the lower court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.03.2010 made in MCOP.No.773 of 2005 on the file of the Motor Accident Claims Tribunal (FTC) at Namakkal.

For Appellant : Mrs.R.Sreevidhya

For Respondent 1 : Mr.M.Aniruthan

Respondent 2 set ex parte.

JUDGMENT

The instant appeal has been filed by the insurance company challenging the Award dated 24.03.2010 passed by the Motor Accident Claims Tribunal (Fast Track Court, Namakkal) in MCOP.No.773 of 2005.

The brief facts leading to the filing of the instant appeal are as follows:

2. The first respondent sustained injuries as a result of an accident that took place on 26.07.2005 caused by a lorry bearing registration No.TN28-S-0936 owned by the second respondent and insured with the Appellant. The accident happened while the first respondent was riding a Yamaha Motor Cycle bearing

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registration No.TN45-B-6858. The first respondent preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.773 of 2005 seeking a compensation of Rs.5,00,000/-. The Motor Accident Claims Tribunal by its Award dated 24.03.2010 directed the Appellant to pay the first respondent a sum of Rs.6,05,100/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

3. Aggrieved by the Award dated 24.03.2010 passed in MCOP.No.773 of 2005, the instant appeal has been filed by the Insurance Company.

4. Heard, Mrs.R.Sreevidhya, learned counsel for the Appellant and Mr.M.Aniruthan, learned counsel for the first respondent. The second respondent has remained ex parte both before the Tribunal as well as before this Court.

5. According to the learned counsel for the Appellant, the Appellant has filed this Appeal questioning the findings on the negligence as well as the quantum. According to her, the Tribunal has failed to consider Ex.B4 Rough Sketch which reveals that it was the two wheeler which was the cause for the accident. The learned counsel for the Appellant further contended that the quantum of compensation awarded to the first respondent under the impugned Award is also excessive.

6. According to the learned counsel for the Appellant, the Tribunal under the impugned Award has erred in passing a disproportionate amount as compensation, even though the first respondent was not able to establish before the Tribunal that he had suffered permanent disability and loss of earning capacity. According to her, the compensation awarded to the first respondent towards loss of income for the period of four years is excessive.

7. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels, observes the following:

a) The first respondent has filed fourteen documents before the Tribunal which were marked as Exs.A1 to A14. The documents included a copy of the First Information Report, a copy of MVI report, a copy of Charge Sheet, Wound Certificate, Discharge Summary from the hospital, Medical Bills, X-ray, Disability Certificate and Salary Certificate. The first respondent has also examined three witnesses on his side including himself as well as his Doctor and his employer.

b) The First Information Report has been registered only against the driver of the lorry insured with the Appellant. Ex.A4, Charge Sheet has also been filed only against the driver

of the insured vehicle.

c) On the side of the Appellant, four documents were filed which were marked as Exs.B1 to B4 including the driving licence and Rough Sketch. The Appellant has also examined two witnesses on their side namely the driver of the lorry, Ravi (RW1) and the Appellant's official, S.Rajaratnam (RW2).

d) The Tribunal has considered all the materials available on record and thereafter, has given a categorical finding that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened.

e) As seen from the First Information Report as well as the Charge Sheet and the oral and documentary evidence available on record, before the Tribunal, it is clear that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened.

f) Ex.B4, Rough Sketch which the Appellant is relying upon was prepared on 27.07.2005 whereas the accident happened on 26.07.2005, the previous day. Further, it is not clear from the Rough Sketch Ex.B4 that the two wheeler in which the first respondent was a rider was the cause for the accident. The Tribunal under the impugned Award has considered both the oral and documentary evidence and only thereafter, has held that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened.

g) Insofar as the quantum of compensation awarded by the Tribunal is concerned, the Appellant has not disputed the age, avocation, monthly income of the first respondent and also the nature of injuries sustained by the first respondent before the Tribunal.

h) The first respondent has produced his salary certificate which was marked as Ex.A14 and his employer was examined as PW3. Only based on the oral and documentary evidence produced by the first respondent, the Tribunal has assessed the monthly income of the first respondent at Rs.4,000/-.

i) The first respondent was aged 35 years and was a driver employed with Om Sakthi Matriculation School, Paramathi. He sustained multiple grievous injuries and also sustained compound fracture in both legs and severe injuries in forehead, thigh and wrist. The first respondent was hospitalised from 26.07.2005 to 20.03.2006.

j) The Tribunal under the impugned Award has awarded a sum of Rs.1,44,000/- towards loss of income, Rs.60,000/- towards pain and suffering, Rs.30,000/- towards disability at 30%, Rs.5,000/- towards transportation charges, Rs.15,000/- towards Extra Nourishment, Rs.1,74,521/- towards reimbursement of medical bills and Rs.176,625/- for Hospitalisation (Surgery and room charges).

k) Though the Doctor has assessed the disability at 45% and the Disability Certificate has also been marked as Ex.A12, the Tribunal assessed the disability at 30%. Considering the nature

of injuries sustained by the first respondent, in the considered view of this Court, the Tribunal has rightly applied the multiplier method in assessing the disability compensation payable to the first respondent.

1) Further, in the considered view of this Court, the compensation under various heads awarded by the Tribunal is a just compensation.

8. In the light of the above observations, this Court is of the considered view that there is no merit in the instant Appeal and the appeal is dismissed without costs. Consequently connected miscellaneous petition is closed.

9. The Appellant is directed to deposit the amount awarded by the Tribunal, after deducting the amount already deposited, together with interest, from the date of claim to the date of deposit, to the credit of MCOP.No.773 of 2005 on the file of the Motor Accident Claims Tribunal (FTC) at Namakkal, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent is permitted to withdraw the amount along with accrued interest lying to the credit of MCOP.No. 773 of 2005 by filing an appropriate application.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. Fast Track Court,
The Motor Accidents Claims Tribunal, Namakkal.

2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.71394

+1cc to Mr.M.Aniruthan, Advocate SR.No.70895

CMA. No.192 of 2011 and
M.P.No.1 of 2011

RJI (CO)

GMV (08/11/2018)