

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA No.368 of 2015
and M.P.No.1 of 2015

IFFCO - TOKIO

General Insurance Company Ltd.,
No.138/2, 2nd Floor,
LMR Shopping Arcade,
Opp. MGM Theatre
Namakkal - 637 001.

...Appellant / 2nd Respondent

vs.

1.B.Bethan

... 1st Respondent/Petitioner

2.R.Rajkumar

... 2nd Respondent/1st Respondent

(R2 set exparte before the trial court)

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the decree and judgment made in MCOP No.87 of 2013 dated 12.09.2013 on the file of the Motor Accidents Claims Tribunal (Additional District Court), Namakkal.

For Appellant : Mr.C.R.Krishnamoorthy

JUDGMENT

The appeal has been preferred by the insurance company against the compensation of Rs.2,59,300/- awarded by the tribunal to the first respondent for the injuries sustained by him in the accident occurred on 04.11.2012.

2. Heard Mr.C.R.Krishnamoorthy, learned counsel appearing for the appellant/insurance company who would very strenuously argue that the amount awarded by tribunal is on the higher side and it has got no nexus with the disability sustained by him.

3. A close scrutiny of the award would show that the claimant sustained fracture of bones in the right leg and the nerves got crushed leading to admission of the claimant in Maruthi Hospital, Namakkal from 04.11.2012 to 21.11.2012; surgery was conducted, plate was fixed, as evident from Ex.P2, wound certificate and Ex.P4 - discharge summary. The fracture of tibia and fibula was set right by interlocking, by fixing the plate and screw, as stated above. Even as on date, the plate and screw have not been removed. The

length of the right leg got shortened by 1½ cm than the left leg. In view of that, the petitioner is unable to walk normally and even the sensation in the right leg is reduced so that he cannot lift heavy articles; while using steps and squatting on the floor, he finds very difficult and therefore as per Ex.P8, PW2 doctor determined the disability at 35%. For 35% disability, the tribunal awarded Rs.70,000/-.

4. The respondent was doing business in poultry field earning about Rs.7,000/- per month. Since the claimant was admitted in the hospital for 17 days and was taking treatment for longer time, a sum of Rs.30,000/- was rightly awarded towards loss of income. Rs.5,000/- towards transportation, Rs.25,000/- towards extra nourishment, Rs.30,000/- towards pain & sufferings and Rs.59,296/- as per Ex.P5 - medical bills and Rs.40,000/- towards loss of earning capacity, totalling to a sum of Rs.2,59,269/-, rounded off to Rs.2,59,300/- awarded by the tribunal is very fair and just compensation. Therefore, the appeal fails.

5. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant/insurance company is directed to deposit the entire award amount, alongwith interest and costs, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. In such deposit, the first respondent/claimant is permitted to withdraw the same, after adjusting the amount already withdrawn, if any.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Additional District Judge,
Motor Accident Claims Tribunal,
Namakkal.

+1 cc to Mr.C.R.krishnamoorthy, Advocate, SR.29123.

Kji(co)
krd 8/7

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