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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2015

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THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. Nos. 37 & 38 of 2015

C.M.A. No. 37 of 2015

The Branch Manager,
M/s. Royal Sundaram Alliance
Insurance Co. Ltd.,
The Branch Office,
Thirumalai Towers, Avinasi Road,
Coimbatore - 641 018.

..Appellant/2nd Defendant

Vs.

1. Mr. Mahesh
2. M/s. Sri Venkateswara Modern
Farm,
Onnalvadi Post,
Hosur Taluk and
Krishnagiri District - 635 113. ..Respondents/Petitioner/1st
Respondent.

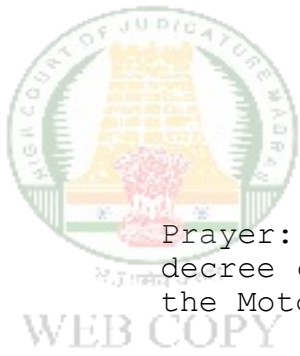
C.M.A. No. 38 of 2015

The Branch Manager,
M/s. Royal Sundaram Alliance
Insurance Co. Ltd.,
The Branch Office,
Thirumalai Towers, Avinasi Road,
Coimbatore- 641 018.

..Appellant/2nd Defendant

Vs.

1. Mr.Sriramulu
2. M/s. Sri Venkateswara Modern
Farm,
Onnalvadi Post,
Hosur Taluk and
Krishnagiri District - 635 113. ..Respondents/Petitioner/1st
Respondent.



Prayer: Civil Miscellaneous Appeals as against the judgment and decree dated 15.07.2014 passed in M.C.O.P. Nos.468 and 680 of 2013 by the Motor Accidents Claims Tribunal (Special Sub Judge), Krishnagiri.

For Appellant :: Mrs. Harini for
Mr.M.B. Gopalan

J U D G M E N T

These Civil Miscellaneous Appeals have been preferred by the Insurance Company as against the award of Rs.6,04,296/- granted in favour of the 1st respondent in C.M.A. No. 37 of 2015, who was a minor, aged about 15 years, at the time of accident and against the award of Rs.1,72,817/-, in favour of the 1st respondent in C.M.A. No. 38 of 2015, who is a painter, aged about 35 years. Both of them sustained injuries in the very same accident, which occurred on 06.01.2009, when the motorcycle, driven by the painter, with the minor as pillion rider, was hit by a car insured with the Insurance Company.

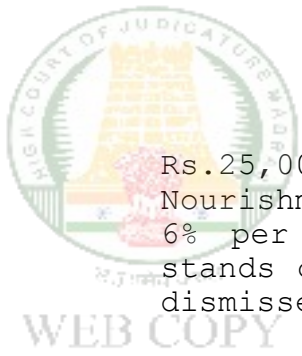
2. Heard the learned counsel for the appellant.

3. The only question to be decided in both the appeals is with regard to the quantum of compensation.

4. As far as C.M.A. No. 37 of 2015 is concerned, according to the learned counsel for the appellant, the injured was a minor, aged about 15 years, at the time of accident and the sum of Rs.4 lakhs awarded towards "Permanent Disability" and Rs.50,000/- awarded towards "Future Medical Expenses" are on the higher side.

5. The 1st respondent in C.M.A. No. 37 of 2015, sustained injuries, namely, fracture shaft of left femur with fracture condyle plus shaft of left tibia, multiple abrasion over left knee and punctured wound left thigh. He also underwent interlocking nailing of left femur with 10 x 340mm nail and closed reduction and internal fixation was done with T plate of proximal tibia fracture by MIPPO technique. Therefore, based on P.W.2, Doctor's evidence and as per Ex-P14, Disability Certificate, the Tribunal rightly determined the disability at 50% and following the judgment of the Honourable Apex Court rendered in Master Mallikarjun V. Divisional Manager, National Insurance Company Limited reported in 2013 2 TN MAC 338 (SC), for disability at 50%, Rs.4 lakhs was rightly granted.

6. The sum of Rs.50,000/- granted towards "Future Medical Expenses" cannot be found fault with as correction of fracture of femur tibia and incidental expenses for such treatment have to be incurred. Similarly, Rs.25,000/- awarded towards "Pain and Suffering"; Rs.1,04,296/- awarded towards "Medical Bills and

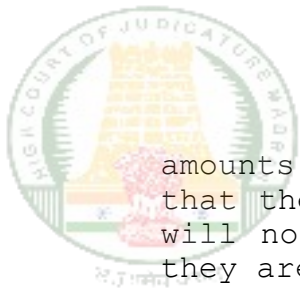


Rs.25,000/- awarded towards "Transportation Expenses" and "Extra Nourishment" are reasonable and are confirmed. The rate of interest @ 6% per annum, considering the date of accident, ie., 06.01.2009, stands confirmed. Hence, C.M.A. No. 37 of 2014 fails and the same is dismissed. No costs. Connected M.P. is closed.

7. As far as C.M.A. No. 38 of 2015 is concerned, the 1st respondent, namely, Sriramulu, a Painter, as stated above, sustained 25% disability on account of the injuries sustained by him, namely, sutured wound of 5cm in the centre of forehead, sutured wound of 3cm joint above 1; transverse laceration 3x1x1cm in left hand dorsum with fracture metacarpel; abrasion of ½ x 1cm left little finger; abrasion of 3x4cm left ankle joint with surrounding swelling; X-ray left hand fracture with 4th MC and left ankle - MAD. Therefore, based on P.W.2, Doctor's evidence and relying on Ex-P12, Disability Certificate and other medical records, the Tribunal rightly determined the disability at 25%. For 25% disability, the Tribunal, @ Rs.3000/- per percentage, awarded Rs.75,000/- towards "Disability". The sum of Rs.30,000/- awarded towards "Pain and Suffering"; Rs.20,000/- awarded towards "Nutrition and Transportation"; Rs.10,000/- awarded towards "Attendant Charges"; Rs.15,000/- awarded towards "Loss of earning" during treatment period; Rs.12,818/- awarded towards "Medical Expenses" and Rs.10,000/- awarded towards "Loss of Amenities" are all reasonable amounts and they are confirmed. So also, the rate of interest awarded at 6% per annum. Hence, C.M.A. No. 38 of 2014 fails and the same is dismissed. No costs. Connected M.P. Is closed.

8. It is brought to the notice of this Court that since the rider of the two-wheeler did not possess driving licence, in paragraph No.9 of the award, the Tribunal rightly directed the appellant Insurance Company to pay the respective award amount to the respective claimants and recover the same from the 2nd respondent owner. The said direction, which is based on evidence and facts, cannot be found fault with.

9. The appellant is directed to deposit the entire award amount, in respect of the 1st respondent in the respective appeals, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respective claimants are permitted to withdraw their respective



amounts within a period of two weeks thereafter. It is made clear that the dismissal of the above appeals filed by the Insurance Comany will not preclude the respective claimants from filing an appeal, if they are so advised.

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-s/d-

Deputy Registrar(J)

Dt:10/3/2015

True Copy

Sub-Assistant Registrar

To

The MACT,
Special Sub Judge,
Krishnagiri.

+ 2 ccs to Mr.M.B.Gopalan, Advocate SR 8332, 8333.

tej(co)
prk13/3

C.M.A. Nos. 37 & 38 of 2015